

# EXHIBIT “C”

VOLUME II - 64

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO: 04-10374WGY

\*\*\*\*\*  
NORTH AMERICAN SPECIALTY  
INSURANCE COMPANY,  
Plaintiff,

vs.

MARY & JOSEPHINE CORP. and  
MATTEO RUSSO,  
Defendants.  
\*\*\*\*\*

CONTINUED DEPOSITION OF ROBERT McVEY, a  
witness called on behalf of the Defendant, Mary  
& Josephine Corp., pursuant to the Federal  
Rules of Civil Procedure before Jo Anne M.  
Shields, Professional Shorthand Reporter and  
Notary Public in and for the Commonwealth of  
Massachusetts, at the Law Offices of Joseph G.  
Abromovitz, P.C., 858 Washington Street,  
Dedham, Massachusetts, on Tuesday, September 13,  
2005, commencing at 10:08 a.m.

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I N D E X

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S T I P U L A T I O N S

It is stipulated by and between  
counsel for the respective parties that the  
deposition transcript is to be read and signed  
by the deponent under the pains and penalties  
of perjury; and that the sealing and filing  
thereof are waived; and that all objections,  
except as to form, and motions to strike are  
reserved to the time of trial.

\* \* \*

P R O C E E D I N G S

MR. PETTINGELL: All right. Well, we're  
here this morning as a continuation of the  
30(b)(6) deposition of American -- North  
American Specialty Insurance Company. Day 1  
was on January 5th of this year. And we're  
continuing with the deposition of Robert McVey.  
And we -- we're all in agreement that he is  
Mr. McVey, who's known to us. And I  
understand he's still under oath.

MR. PETTINGELL: Let's go off the record  
for a second.

(A brief discussion was held off the  
record.)

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DIRECT EXAMINATION

BY MR. PETTINGELL:

Q. All right, Mr. McVey. I'd like to cover a few things that we didn't cover before. I wonder if you could give us a description of your educational history.

A. I have a high school education, graduated high school. I went to several schools to acquire a 1,600-ton captain's license, firefighting school, radar endorsement, first aid, CPR, that type of stuff, took several courses at various universities. Mass. -- I'm trying to think of what school. I took net trawl manufacturing and trawl construction, bottom trawl construction -- mostly, fishing boat courses -- several insurance courses to get my agent's license. That's a quick summary of . . .

Q. Okay. Could you tell us what formal training you've had in terms of insurance courses?

A. I've had -- originally, I had to take the agent's classes. It probably consisted of a four-week class, then follow-up study for two or three months to obtain my license.

Q. Where did you take that, sir?

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A. In Rhode Island.

Q. What -- what facility was --

A. It was at CCRI, Community College of Rhode Island, in Warwick, Rhode Island.

Q. Okay. And it was how long a course?

A. I think it was a couple of weeks, two to four weeks. It was -- it was quite a while ago.

Q. And what was covered in that? What -- excuse me. What was the name of that course?

A. It was agent's licensing. I -- I don't know the name of it. I don't remember exactly. But it was to obtain a agent's license.

Q. An insurance agent's --

A. Yes.

Q. -- license?

A. Insurance agent's license.

Q. In Rhode Island?

A. Yes.

Q. And can you tell us what the curriculum consisted of, what you studied during that two-to four-week course?

A. I remember, basically, studying property casualty claims. But I don't remember a lot of detail of it.

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Q. Did you discuss -- did your study include different policy terms and provisions?

A. Yes.

Q. Did it include terms and provisions involving marine insurance?

A. Some.

Q. Can you tell us about that, please?

A. It was very little marine insurance, enough that I couldn't even recollect what it was. But they just slightly touched base on marine insurance.

Q. You don't remember the specifics?

A. I -- I don't.

Q. And the purpose of this course was to enable you to get an insurance agent's license?

A. Correct.

Q. When was this?

A. Probably 16 years ago.

Q. You do the math. Tell me when.

A. What year?

Q. Yes.

A. Oh, boy. I think it was about 1989, maybe.

Q. Have you had any additional or formal training on insurance since you took this insurance

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agent's licensing course?

A. Yes.

Q. All right. Could you tell us about that, please?

A. Every year, we're required to take classes and courses in continuing education.

Q. Required by who?

A. By the State of Rhode Island.

Q. And how many hours of continuing education are you required to take per year?

A. I think it's approximately ten.

Q. Where do you -- and have you taken ten hours of training every year since 1989?

A. Approximately.

Q. Where?

A. At times, we've had to go out of state to take it. Chicago I remember once going to. I remember going to New Jersey. Some of it's done in-house on a -- on-line, you could take some of them.

Q. Did any of the formal training that you took as part of your continuing education include issues involving marine insurance?

A. I really can't remember. I don't -- I don't

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1 think, very much of it, if it was.  
2 Q. Now, you testified last January that it was  
3 your understanding that there was no P&I  
4 coverage under -- under a port risk policy?  
5 MR. LANGER: Objection. I -- I don't think  
6 that's an accurate recitation of his testimony.  
7 But --  
8 THE WITNESS: Yeah.  
9 MR. LANGER: -- you can answer it.  
10 A. Yeah. I don't think it's accurate either.  
11 Q. All right. Well, if I'm inaccurate, then let's  
12 correct it. What is your understanding as to  
13 whether or not there is P&I coverage when a  
14 vessel is under port risk?  
15 MR. LANGER: Objection. It's been asked  
16 and answered. You can answer it again.  
17 A. It's called vessel P&I, which is a little bit  
18 different than crew P&I, where it, pretty much,  
19 covers the liability.  
20 Q. All right. So there is a P&I cover if a vessel  
21 is on port risk, but not for a crew?  
22 A. Correct.  
23 Q. And I stand corrected. I believe that is what  
24 you testified to back in January as well. And

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1 I'd like to know, what's your basis for giving  
2 that opinion? Where -- where did that opinion  
3 come from?  
4 A. From my 16 years of being in the business.  
5 Q. Well, can you be a little more specific?  
6 A. No, not really.  
7 Q. Well, at some point, the understanding as to  
8 there being no P&I cover for crew available if  
9 a vessel was on port risk, at some point, you  
10 came to that understanding. Do you remember  
11 when?  
12 A. No.  
13 Q. Well, you've been in the business, as you say,  
14 for 16 years.  
15 A. Right.  
16 Q. Was that your understanding in Year 1?  
17 A. It's just experience over the 16 years. I  
18 can't pinpoint exactly when I -- I -- I gleaned  
19 that bit of information and learned it. But  
20 it's a policy and procedure that we follow.  
21 And . . .  
22 Q. Who's "we"?  
23 A. We is Ocean Marine Insurance Agency.  
24 Q. Okay. Did somebody at Ocean Marine Insurance

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1 tell you that if a vessel was on port risk, the  
2 P&I cover that was available under the port  
3 risk cover did not include crew?  
4 A. Yes.  
5 Q. Do you know -- do you remember who?  
6 A. I would assume it might be Frank Ostrow.  
7 Q. All right. Well, I -- I want to be fair. If  
8 you don't really remember --  
9 A. I --  
10 Q. -- and you don't --  
11 A. I really don't --  
12 Q. -- really know --  
13 A. -- remember.  
14 Q. Let me talk. We can't both talk at --  
15 A. Go ahead.  
16 Q. -- the same time. If you don't really know or  
17 you don't really recall, you should -- you  
18 should indicate that. I -- I don't want you to  
19 assume something, 'cause you may be incorrect.  
20 A. I think I said that earlier, that I didn't -- I  
21 don't recall specifically.  
22 Q. Okay. And you can't recall how long into your  
23 16-year experience as an insurance agent or  
24 producer at OMI you first came to that

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1 understanding?  
2 A. I would say it would be at the beginning of my  
3 career, within the first year or so.  
4 Q. Okay. And whoever it was that told you this  
5 was someone at OMI?  
6 A. Yes.  
7 Q. Other than this understanding that you obtained  
8 from someone at OMI, have you ever heard from  
9 any other source that there is no P&I cover  
10 available for crew if a vessel is on port risk  
11 coverage?  
12 A. Yes. I've heard it from other sources.  
13 Q. What sources?  
14 A. I've heard it from a -- Sunderland Marine  
15 people. I've heard it from Fireman's Fund  
16 people.  
17 Q. Who at Sunderland Marine told you this?  
18 A. I don't remember specifically.  
19 Q. Do you remember specifically when they told you  
20 this?  
21 A. Probably 15 years ago, 16 years ago.  
22 Q. Now, do you know when Mr. Russo's accident  
23 occurred?  
24 A. Yes.

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1 Q. And when was that?  
2 A. I believe it was December of 2003.  
3 Q. Okay. Now, at the time of Mr. Russo's  
4 accident, was the vessel on port risk?  
5 A. Yes.  
6 Q. And at what point in time did you first learn  
7 that Mr. Russo's vessel was going to be going  
8 on port risk?  
9 A. I think it was when we renewed his vessel in  
10 August.  
11 Q. Of 2003?  
12 A. Yeah.  
13 Q. So you were aware that Mr. Russo's vessel was  
14 to go on port risk several months prior to the  
15 happening of his accident in December of 2003?  
16 A. Yes.  
17 Q. All right. Now, there was a time, wasn't  
18 there, Mr. McVey, when you believed there was  
19 coverage under Mr. Russo's policy for the  
20 injuries he sustained at the time of his  
21 December 2003 accident?  
22 MR. LANGER: Objection.  
23 A. I don't remember that time.  
24 Q. Okay. Let's see if I can help you.

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1 MR. LANGER: Can we just take a break for  
2 two minutes?  
3 MR. PETTINGELL: Yeah.  
4 MR. ABROMOVITZ: I'd object to the break at  
5 this point in time. I think we're in a  
6 sensitive area of the questioning, and I don't  
7 see any reason that we should have a break  
8 where -- I want this on the record -- where  
9 Mr. McVey needs to consult with his counsel.  
10 MR. LANGER: Okay.  
11 MR. ABROMOVITZ: So I would object to the  
12 break being taken. If we were in a courtroom  
13 setting, you would, actually, not be entitled  
14 to a break right now.  
15 MR. LANGER: Okay. Your objection is  
16 noted. There's no pending question. He's  
17 looking for a document to show him. I think  
18 I'm entitled to talk to him about something  
19 that he's already answered. It's not --  
20 MR. ABROMOVITZ: I -- I will -- I will  
21 state on the record my objection to this. I  
22 don't think there should be any conversation  
23 between Mr. Langer, counsel for NAS, and  
24 Mr. McVey, a 30(b)(6) designee, about the

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1 subject matter of his testimony --  
2 MR. PETTINGELL: Well, I --  
3 MR. ABROMOVITZ: -- during the course of  
4 this deposition.  
5 MR. PETTINGELL: I have the document. So  
6 we don't have to take a delay.  
7 MR. LANGER: I'd -- I'd like to talk to him  
8 for a minute.  
9 MR. ABROMOVITZ: My objection on the  
10 record, please, on behalf of Mr. Russo.  
11 (Brief recess taken.)  
12 BY MR. PETTINGELL:  
13 MR. LANGER: There's something you want to  
14 clarify?  
15 THE WITNESS: Yeah.  
16 A. I'm a -- a bit confused about the time  
17 frames --  
18 Q. Well --  
19 A. -- to that question you just asked.  
20 Q. I'll put it --  
21 MR. PETTINGELL: I wonder if I could have  
22 the question read back.  
23 (Question and Answer read back.)  
24 Q. Okay. I'll put it to you again. There was a

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1 time after Mr. Russo's injury when you believed  
2 that there was, in fact, coverage available?  
3 A. After his injury?  
4 Q. Well, obviously, you wouldn't have thought it  
5 before his injury if he hadn't been hurt yet.  
6 There was a time after Mr. Russo was injured on  
7 the vessel while it was on port risk where you  
8 believed he was entitled to crew coverage under  
9 the policy?  
10 MR. LANGER: Objection. It's been asked  
11 and answered. He said no.  
12 MR. PETTINGELL: Well, I'm clarifying the  
13 question for him.  
14 A. I'll say no again.  
15 Q. Okay. And the initial reason for den- --  
16 denying coverage to Mr. Russo's claim to Mary &  
17 Josephine Corporation was that Mr. Russo was an  
18 owner of the vessel or part-owner of the  
19 vessel. Do you recall that?  
20 MR. LANGER: Objection. It calls for a  
21 legal conclusion. Also assumes facts not in  
22 evidence. Go ahead.  
23 A. Yeah. I -- I recall that.  
24 Q. And, at some point in time -- in fact, I think

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1 you made a phone call to Mr. Russo at the  
2 hospital where he was undergoing treatment  
3 following his injury and advised him there was  
4 no coverage because he was an owner?  
5 A. That's not true.  
6 Q. That's not true? Did you have a telephone  
7 conversation with him at the hospital?  
8 A. Yes. I did.  
9 Q. And did the topic of whether or not there was  
10 coverage for his injuries ever come up during  
11 that conversation?  
12 A. Yes. It did.  
13 Q. Okay. And what was the gist of the  
14 conversation you had with Mr. Russo?  
15 A. I called Mr. Russo up to see how he was doing,  
16 and he asked if there was coverage. And I said  
17 we were working on it. At this time, we didn't  
18 know.  
19 Q. Okay. You had no discussion with him that you  
20 recollect where the issue of whether or not he  
21 was an owner of the vessel came up?  
22 A. While he was in the hospital, again?  
23 Q. Yes.  
24 A. No.

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1 Q. Okay. I'd like to show you a -- I'd like to  
2 show you a document --  
3 MR. PETTINGELL: And for the record -- for  
4 your purposes, this is Bates stamped 000369.  
5 MR. LANGER: This highlighting is not part  
6 of the original document, I'm assuming.  
7 MR. PETTINGELL: That's correct. That's my  
8 highlighting. It's the only way I can read  
9 them.  
10 Q. -- and ask, sir, if you'd look at that and tell  
11 me whether or not you recognize it.  
12 (A brief discussion was held off the  
13 record.)  
14 MR. LANGER: The question is, do you  
15 recognize the document?  
16 A. Yeah. Yes. I recognize it.  
17 Q. All right. Can you tell me what that document  
18 is?  
19 MR. ABROMOVITZ: Can we mark it first?  
20 MR. PETTINGELL: All right. Let's mark it  
21 as Exhibit 2.  
22 MR. LANGER: With the understanding that  
23 the highlighting is --  
24 MR. PETTINGELL: The highlighting is not on

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1 the original document.  
2 MR. ABROMOVITZ: Well, why don't we go off  
3 the record.  
4 (A brief discussion was held off the  
5 record.)  
6 (E-mail to Janet from Bob McVey dated  
7 12/5/03 marked as McVey Exhibit No. 2.)  
8 MR. PETTINGELL: Off the record.  
9 (A brief discussion was held off the  
10 record.)  
11 (Question read back.)  
12 Q. The document we've marked as Exhibit 2, can  
13 you -- can you tell us what that document is,  
14 please, sir?  
15 A. This is a correspondence that I sent to  
16 Sunderland Marine regarding the accident Matt  
17 Russo had.  
18 Q. And what's the date of the correspondence?  
19 A. December 5th.  
20 Q. This is --  
21 A. 200- --  
22 Q. -- an e-mail, is it?  
23 A. Yes. It is.  
24 Q. And it says "From: Deweydog@aol.com."

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1 A. Yes.  
2 Q. Is that your -- or was that your e-mail address  
3 at the -- the time, December 5th, 19- -- 2003?  
4 A. Yes.  
5 Q. And I wonder, sir, if you could read the first  
6 paragraph into the record.  
7 A. "I have just finished going over the claim  
8 involving Matt Russo and realized that he is  
9 covered as a crew member. His father Sal is  
10 listed as 100% -- 100% ownership with Matt  
11 being the captain. Matt is listed as  
12 part-owner on their other 2 vessels, the F/V  
13 Josephine and the F/V Damariscotta. They are  
14 covered for three to four men on the Mary &  
15 Josephine."  
16 Q. So as of December 5th, 2003 when you sent this  
17 e-mail -- and this e-mail went to who?  
18 A. Janet Cook.  
19 Q. And who's Janet Cook?  
20 A. She's the claims advisor of the claims, in  
21 charge of claims at Sunderland Marine.  
22 Q. In England?  
23 A. Yes.  
24 Q. All right. At the time that you sent Ms. Cook

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1 this e-mail we've marked as Exhibit 2, you were  
2 of the opinion that Mr. Russo was covered as a  
3 crew member; he was entitled to coverage under  
4 the policy?

5 MR. LANGER: Objection.

6 A. Not necessarily.

7 Q. Perhaps you can explain to me then what you  
8 meant when you said you -- you "just finished  
9 going over the claim involving Matt Russo and  
10 realized that he is covered as a crew member?"

11 A. Well, we didn't realize at the time that he was  
12 on port risk.

13 Q. You didn't know --

14 A. Because -- we -- we knew, but it kind of  
15 slipped out.

16 Q. So at the ti --

17 A. Once --

18 Q. I -- I beg your pardon. I -- I don't want to  
19 cut you off. Go ahead.

20 A. Once we went back over the claim, we realized  
21 that the boat wasn't fishing; and it was on  
22 port risk.

23 Q. I see. So when you -- when you sent this  
24 e-mail marked as Exhibit 2, you had forgotten

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1 that the vessel Mr. Russo was working on was on  
2 port risk?

3 A. No. I hadn't forgotten. This is, pretty much,  
4 a generic makeup of the course of the year.  
5 They were covered for three to four men. And  
6 when the boat was actively fishing, when they  
7 were covered, Matt was a covered crewman.

8 Q. Uh-huh. Well, I'm referring to the first  
9 sentence in the first paragraph where you  
10 state, "I have just finished going over the  
11 claim involving Matt Russo and realized that he  
12 is covered as a crew member."

13 A. Yeah. When the boat was actively fishing, he  
14 was listed as a crew member.

15 Q. Well, coming up to the top, the subject of this  
16 e-mail is "Matt Russo F/V Mary and Josephine."  
17 And, in the first paragraph, you're talking  
18 about the "claim involving Matt Russo." So  
19 when you say he's covered as a crew member,  
20 that doesn't mean that you believed that he  
21 was -- that his claim was a covered claim under  
22 the policy?

23 MR. LANGER: Objection.

24 A. Correct.

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1 MR. LANGER: Form of the question. Wait  
2 till he finishes his question --

3 THE WITNESS: Sorry.

4 MR. LANGER: -- before you answer it.

5 Q. You say that wha- -- my statement was correct?

6 A. Repeat it again.

7 MR. PETTINGELL: Can I have it read back,  
8 please.

9 (Question read back.)

10 MR. LANGER: Objection to the form.  
11 Foundation. Calls for a legal conclusion.

12 MR. PETTINGELL: Well, you stated your  
13 objection and the basis for it. And I thank  
14 you. But this is Mr. McVey's language, and I'm  
15 trying to understand what he means when he says  
16 "covered."

17 MR. LANGER: Well, then, ask him what he  
18 means, rather than telling him what you think  
19 he means.

20 MR. PETTINGELL: Well, I'll ask my question  
21 the way I want.

22 MR. LANGER: Fine. I'll object to it.

23 MR. PETTINGELL: And you can object to it.

24 Q. At the time that you wrote this e-mail,

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1 Mr. McVey, you were aware that Sunderland was  
2 denying coverage. At least, one of the bases  
3 for denying coverage was that Mr. Russo was an  
4 owner of the vessel.

5 MR. LANGER: Object to the form and the  
6 foundation of the question.

7 A. I think they were looking into the fact that he  
8 might have been an owner, but I don't think the  
9 claim was directly denied because he was an  
10 owner.

11 Q. All right. Do you know whether or not the  
12 claim was ever denied on the basis that  
13 Mr. Russo was an owner of the vessel?

14 A. No. I don't.

15 Q. Okay. In any event, the first paragraph of  
16 Exhibit 2, referring to that first paragraph of  
17 Exhibit 2, is it fair to say you were telling  
18 Ms. Cook that he was not an owner?

19 A. Yes.

20 Q. And your statement that you -- and I quote --  
21 "I have finished going over the claim involving  
22 Matt Russo and realized that he is covered as a  
23 crew member."

24 A. When he was being a crew when the boat was

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1 active.  
2 Q. Well, was the boat active at the time of his  
3 injury?  
4 A. No.  
5 Q. Why did you pick this particular time,  
6 December 5th, 2003, to pass that bit of  
7 information on to Ms. Cook at Sunderland?  
8 A. I don't remember the context. But she might  
9 have been asking me how many crew was on the  
10 boat when it was insured for active fishing.  
11 Q. Now, were you involved at all in placing the  
12 vessel on port risk only coverage?  
13 A. Yes.  
14 Q. And what was your involvement?  
15 A. I received a phone call from Matt Russo,  
16 telling me to put the boat -- that the boat  
17 hadn't been fishing and will not be fishing. I  
18 reiterated that information to Lynn.  
19 Q. Do you remember when that phone call was?  
20 A. The beginning of October, I believe, 2003.  
21 Q. Was there any discussion during that telephone  
22 call about a reduction in the size of the crew  
23 on the vessel?  
24 A. Yes.

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1 Q. Would you tell us about that, please?  
2 A. Mr. Russo indicated to me -- told me that there  
3 was no crew on the vessel; there hadn't been, I  
4 believe, since May; and there will not be till  
5 further notice.  
6 Q. Did he instruct you that he wished to have the  
7 size of the crew reduced under the policy?  
8 A. Yes.  
9 Q. And when was this call?  
10 A. The beginning of October.  
11 Q. And what is your memory of -- of what Mr. Russo  
12 asked you to do?  
13 A. He said that the boat hadn't been fishing -- I  
14 believe, again -- since May and presently  
15 wasn't fishing, wasn't going to be fishing; and  
16 he did not want any crew covered on the boat.  
17 Q. Okay. And, in response to that, what did you  
18 do?  
19 A. I talked to Lynn and gave her the information.  
20 Q. For what purpose?  
21 A. So we could see if we could get him some money  
22 back on his policy.  
23 Q. Now, was it your understanding that Lynn -- and  
24 by Lynn, you mean Ms. Houde?

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1 A. Ms. Houde.  
2 Q. What was your understanding as to what she was  
3 going to do with the information you had passed  
4 on to her?  
5 A. I really don't know what Lynn's procedures are  
6 when she's in the office.  
7 Q. Speaking generally, is it your understanding  
8 that that information was to be communicated to  
9 Sunderland?  
10 A. I really don't know.  
11 Q. Okay. This is something that would be better  
12 left for --  
13 A. Yeah.  
14 Q. -- Ms. Houde to discuss?  
15 A. Exactly.  
16 Q. All right. Fair enough. Okay. I may have  
17 just asked you this, but your answer is not  
18 clear to me so I understand it. What was your  
19 purpose in telling Ms. Houde that Mr. Russo  
20 didn't want to have any crew coverage while the  
21 vessel was on port risk?  
22 A. The purpose was 'cause she keeps the records,  
23 and she does the paperwork involvement.  
24 Q. Was it necessary that something formally happen

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1 with respect to the policy in order to effect a  
2 change in coverage or the change in coverage  
3 that Mr. Russo was asking you for?  
4 A. Again, that would probably be more Ms. Houde's  
5 department than mine.  
6 Q. I understand that. But you passed it on to her  
7 for purposes of recordkeeping.  
8 A. Right.  
9 Q. And what -- what was your understanding of why  
10 that was necessary, your understanding of why  
11 that was necessary?  
12 A. So Matt Russo wouldn't have to pay a premium on  
13 his crew when he wasn't using it.  
14 Q. So you were passing this information on to  
15 Ms. Houde so that she could get a return  
16 premium, if possible, for --  
17 A. Yes.  
18 Q. -- the client? Okay. Now, do you recall -- is  
19 that what I gave you there? Do you recall  
20 getting a response back from Sunderland to your  
21 e-mail of December 5th that we've marked as  
22 Exhibit 2?  
23 A. No. I don't.  
24 MR. ABROMOVITZ: What are you looking for?

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1 MR. PETTINGELL: An unmarked copy of this.  
2 Q. Let me show you a document -- this is Bates  
3 stamped 382 -- and ask if you'd take a moment  
4 and look at it.

5 MR. PETTINGELL: I'm going to have this  
6 marked as Exhibit 3.

7 (E-mail to Bob McVey from Craig McBurnie  
8 dated 12/8/03 marked as McVey Exhibit  
9 No. 3.)

10 Q. Have you had a chance to review it?

11 A. Yes.

12 MR. PETTINGELL: Okay. Why don't we mark  
13 that as the next exhibit, as Exhibit 3.

14 THE WITNESS: We marked it already.

15 MR. LANGER: We marked it.

16 MR. ABROMOVITZ: It's marked.

17 Q. Can you tell us what that document, Exhibit 3,  
18 is?

19 A. It's correspondence to me from Craig McBurnie  
20 from Sunderland Marine.

21 Q. Okay. Now, calling your attention to the third  
22 paragraph of that correspondence, was this the  
23 first indication you received from Sunderland  
24 that one of the bases for their denial of

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1 Q. Okay. Can you read the handwriting to  
2 yourself?

3 A. Yes.

4 Q. And do you have any knowledge as to what that  
5 refers to?

6 MR. LANGER: Don't guess. If you know,  
7 fine.

8 A. I don't.

9 Q. Okay. Fair enough. That's not your  
10 handwriting?

11 A. No.

12 Q. Well, I suspect that the "Bill" is Mr. Scola.  
13 So we'll -- we can always go on to him when we  
14 take his deposition. Now, Mr. Russo's  
15 corporation had obtained insurance for the Mary  
16 & Josephine through OMI for two years prior to  
17 the incident in which he was injured on his  
18 boat in December of 2003; is that correct?

19 A. That's correct.

20 Q. And were you involved in -- strike that. And  
21 I -- I think you testified back in January that  
22 you were involved in the initial placement of  
23 coverage?

24 A. Yes.

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1 coverage for Mr. Russo's claim was that  
2 Sunderland had deleted crew P&I coverage  
3 entirely until fishing recommenced?

4 MR. LANGER: Objection to the form and  
5 foundation of the question. Assumes facts not  
6 in evidence.

7 A. Could you read that back, please?

8 (Question read back.)

9 A. I'm not sure.

10 Q. Do you remember having any discussions with  
11 anybody at Sunderland, telephone conversations,  
12 where the fact that crew P&I coverage had been  
13 deleted entirely while the vessel was on port  
14 risk at any time prior to this December 8th,  
15 2003 correspondence?

16 MR. LANGER: You mean, between the date of  
17 the accident and December 8th?

18 MR. PETTINGELL: Yes. Thank you.

19 A. I can't recollect any.

20 Q. Now, there's a handwritten notation that  
21 appears, "Per Bill." Do you see that?

22 A. Yes.

23 Q. Whose handwriting is that, if you know?

24 A. I really don't know.

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1 Q. You provided quotes for coverage?

2 A. Yes.

3 Q. Is that also correct with respect to Policy  
4 Year 2?

5 A. Correct.

6 Q. So in the second -- excuse me -- third  
7 paragraph where Mr. McBurnie, an underwriter at  
8 Sunderland, writes to you that "Last year,  
9 we" -- well, strike that. "In addition, cover  
10 at present is restricted to Port Risks only  
11 following your fax of October 3rd. Last year,  
12 we did the same (as per Lynn's of 17th  
13 September '02) and deleted crew P&I coverage  
14 entirely until fishing recommenced."

15 Were you involved at all in a request that  
16 crew P&I coverage be deleted entirely for  
17 Policy Year 2 while the vessel was on port  
18 risk?

19 A. I don't remember.

20 Q. Okay. This reference to a -- your fax of  
21 October 3rd, do you have that fax with you here  
22 today?

23 A. I think we might.

24 MR. LANGER: Do you have it?

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1 A. I don't have it. No. I do not have it.  
2 MR. PETTINGELL: Let's go off the record.  
3 We'll save a lot of time if we can find it.  
4 (A brief discussion was held off the  
5 record.)  
6 MR. PETTINGELL: With Mr. Langer's  
7 assistance, we found the fax.  
8 MR. SCOLA: Then it must be the calculation  
9 that's missing.  
10 MR. PETTINGELL: And it appears that it was  
11 a fax sent by Ms. Houde. So --  
12 MR. ABROMOVITZ: Do you want to mark it  
13 now, Dick, or no?  
14 MR. LANGER: He referred to it. We might  
15 as well mark it.  
16 MR. ABROMOVITZ: Yeah.  
17 MR. PETTINGELL: Yeah. Why don't we mark  
18 it.  
19 (Fax to Tracy Tate from Lynn Houde dated  
20 10/3/03 consisting of one page marked as  
21 McVey Exhibit No. 4.)  
22 MR. PETTINGELL: And this is Exhibit 4?  
23 COURT REPORTER: Yes.  
24 Q. Mr. McVey, I'd like you to look at what we've

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1 marked as Exhibit 4 and ask you if, to your  
2 knowledge, that is the fax that you were  
3 referring to and which, apparently, is referred  
4 to in the correspondence to you that we've  
5 marked as Exhibit 3?  
6 MR. LANGER: Just to make it clear, you  
7 just asked him whether it was a -- a fax he  
8 referred to, and then you said in the  
9 correspondence to him. So can you just clarify  
10 the question?  
11 Q. Well, have you seen the document we've marked  
12 as Exhibit 4 before?  
13 A. No.  
14 Q. Okay. Following your receipt of the  
15 correspondence marked as Exhibit 3 from Craig  
16 McBurnie, which made reference to your fax of  
17 October 3rd last year -- excuse me --  
18 October 3rd, did you make any effort to see  
19 what he was referring to?  
20 A. I wouldn't have any reason to.  
21 Q. Well, so the answer to my question is, you did  
22 not?  
23 A. No.  
24 Q. Okay. And, I take it -- I think I take it that

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1 the document marked Exhibit 4 you've never seen  
2 before today?  
3 A. I don't recollect seeing it before. No.  
4 Q. Then we can move on. Now, at the time that you  
5 and Mr. Russo had a conversation about the  
6 vessel going on port risk, what was your  
7 understanding of the purpose for the vessel  
8 going on port risk?  
9 A. It was to save Mr. Russo some premium.  
10 Q. And that's because the vessel hadn't been  
11 fishing. So he was trying to retroactively  
12 save some premium?  
13 A. Correct.  
14 Q. Was there any other reason that the boat was to  
15 go on port risk that you were aware of?  
16 A. Not that I'm aware of.  
17 Q. Okay. Do you recall whether or not -- strike  
18 that. We had some discussion last January  
19 about an annual survey of vessels that were  
20 being insured with the Sunderland being  
21 undertaken. Do you recall that?  
22 A. Vaguely, I recall.  
23 Q. All right. And it's a requirement of  
24 Sunderland that the vessels that it is

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1 providing insurance for have to be surveyed  
2 every year, don't they, prior to renewal?  
3 A. Approximately, every year.  
4 Q. All right. And was this done with regard to  
5 Mr. Russo's vessel or the Mary & Josephine?  
6 MR. LANGER: At which point?  
7 MR. PETTINGELL: Prior to the renewal.  
8 MR. LANGER: Which renewal?  
9 MR. PETTINGELL: 2003, Policy Year 3.  
10 A. I don't remember.  
11 Q. Do you recall any year -- now, there were three  
12 policies issued for this vessel; is that  
13 correct?  
14 A. I believe so.  
15 Q. The first year covered from August of 2001 to  
16 August of 2002?  
17 A. Yes.  
18 Q. The second year covered from August of 2002 to  
19 August of 2003?  
20 A. Yes.  
21 Q. And the vessel was up for renewal, which would  
22 have covered from August of 2003 to August of  
23 2004?  
24 A. Yes.

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1 Q. And that policy was, in fact, issued, wasn't  
2 it?  
3 A. Yes. It was.  
4 Q. All right. And do you recall whether or not a  
5 survey was done as a requirement of the  
6 insurance company for any of those three policy  
7 years?  
8 A. Yes.  
9 Q. Which years?  
10 A. I can remember the first year --  
11 Q. All right.  
12 A. -- 'cause I was actively involved with it at  
13 that time. And I know that it was done after  
14 that, but I don't remember when.  
15 Q. And as a result of the surveys that were  
16 performed on the vessel, were recommendations  
17 made by the surveyor for things that should be  
18 done to the vessel?  
19 A. Yes.  
20 Q. And were those recommendations conditions of  
21 the Sunderland providing insurance to the  
22 vessel?  
23 A. I would say yes.  
24 Q. Do you recall, for, at least, one of the three

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1 policy years, the Sunderland requiring that the  
2 vessel go on port risk and not go fishing until  
3 those recommendations had been taken care of?  
4 A. Yes.  
5 Q. Do you remember what year?  
6 A. I believe it was the first year.  
7 Q. Okay. And with respect to the third policy  
8 year, do you recall whether or not the survey  
9 came up with recommendations that had to be  
10 taken care of before the vessel could go  
11 fishing?  
12 A. No.  
13 Q. Who at OMI would recall whether or not that was  
14 the case?  
15 A. I don't recall the boat being told to tie to  
16 the dock because of surveys.  
17 Q. Okay. That wasn't my question. I want to --  
18 A. Rephrase it --  
19 Q. I want to be --  
20 A. -- or ask again.  
21 Q. -- precise. My question was, do you recall  
22 whether, for the third year, there were  
23 recommendations that had to be complied with  
24 before the vessel went out fishing?

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1 A. No. I don't recall that.  
2 Q. Do you recall whether there were  
3 recommendations that had to be complied with as  
4 a condition to coverage for Policy Year 3?  
5 A. Within a certain time frame, probably.  
6 Q. I'm not sure I understand your answer.  
7 A. Well, certain recommendations, we give time  
8 allotments at. Some are longer than others.  
9 Q. Okay. I think -- I think we understand each  
10 other, but I want to make certain the record's  
11 clear. You're not saying that, for the third  
12 policy year, anybody was instructing Mr. Russo  
13 to tie his boat up at port risk until the  
14 recommendations were done?  
15 A. Yeah. I'm not saying that. Correct.  
16 Q. All right. But you're saying there may well  
17 have been recommendations -- surveyor's  
18 recommendations which Mr. Russo had to take  
19 care of. And the normal practice was to give a  
20 certain amount of -- period of time for the  
21 recommendations to be taken care of. But the  
22 boat could be fishing during that period?  
23 A. Yes.  
24 Q. And it's your recollection that was the case

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1 with Mary & Josephine for Policy Year 3?  
2 A. I really don't recollect the survey on Policy  
3 Year 3.  
4 Q. Okay.  
5 A. There was nothing problematic. So there was no  
6 reason for me to really be involved with it.  
7 Q. All right. At what point would you become  
8 involved? You say "problematic." At what  
9 point would you become involved with a boat and  
10 recommendations?  
11 A. If there was a recommendation severe enough to  
12 warrant Sunderland saying the boat can't go  
13 fishing, then I would probably get involved.  
14 Q. Okay. So if an annual survey took place and --  
15 and it said, you've got to put a fire  
16 extinguisher in the pi- -- pilot house or  
17 something like that, that isn't something that  
18 would cause you to become involved. You would  
19 just wait until you got something back from the  
20 insured indicating that this had been taken  
21 care of?  
22 A. Correct.  
23 Q. Do you recall whether or not Mr. Russo  
24 indicated to you that he had planned to take

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1 care of recommendations on the Mary & Josephine  
2 during the period that the vessel was on port  
3 risk prior to taking the boat out fishing for  
4 Policy Year 3?  
5 A. I don't.  
6 Q. I asked if you recall. Are you saying you --  
7 you just don't have a memory one way or the  
8 other? Or that definitely didn't happen?  
9 A. I don't think it happened.  
10 Q. You don't think it happened?  
11 A. It -- it -- not to my recollection, it didn't  
12 happen.  
13 Q. Okay. I think we're at the same point. Did  
14 you ever tell Mr. Russo that there was no crew  
15 P&I cover while his vessel -- or the vessel he  
16 was captain of was on port risk?  
17 A. I discussed it with him when he called me in  
18 the beginning of October. So I probably would  
19 have said, we'll try to take care of it.  
20 Q. I'm not certain that was responsive to my  
21 question. Did you ever tell Mr. Russo that  
22 while his boat -- the boat that he was captain  
23 of was on port risk, there was no crew P&I  
24 coverage --

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1 A. Yes. I did.  
2 Q. -- for the policy? You have a memory of doing  
3 that?  
4 A. Yeah.  
5 Q. Okay. When did you tell him that, sir?  
6 A. Probably when he called me in October.  
7 Q. You say "probably."  
8 A. Yeah.  
9 Q. Do you have a memory of telling him in October?  
10 A. Vaguely.  
11 Q. Of what year?  
12 A. 2003.  
13 Q. Did you ever tell him at any time that there  
14 was no crew coverage available if the vessel  
15 was on port risk at any time before October of  
16 2003?  
17 A. I don't recall.  
18 Q. But you do have a memory of telling him that in  
19 October of 2003?  
20 A. We discussed it, I believe, when he called me  
21 in October. Yes.  
22 Q. Could you tell us about that conversation,  
23 please, sir?  
24 A. I had a call from Matt Russo, telling me that

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1 the boat hadn't fished. Again, I think it's  
2 since May of 2003. It was not fishing  
3 presently, and it probably wasn't going to fish  
4 till several months into the year. And he did  
5 not want any P&I, no crew at all.  
6 Q. Okay. And what did you respond?  
7 A. I responded, we'll take care of it.  
8 Q. Did you tell him, well, don't worry; there's no  
9 P&I just as soon as you put it on port risk  
10 MR. LANGER: Objection to the form of the  
11 question.  
12 Q. By virtue of putting it on port risk, there's  
13 no crew P&I coverage?  
14 A. He asked me for zero P&I coverage.  
15 Q. Right. And my question was, did you tell him,  
16 well, don't worry, it's automatic; if you put  
17 the boat on port risk coverage, there is no  
18 crew P&I cover?  
19 A. I never use the word "automatic" in dealing  
20 with insurance issues.  
21 Q. Well, isn't it your testimony that you  
22 understand that if the vessel is on -- if a  
23 vessel is on port risk coverage, there is no  
24 crew P&I cover?

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1 A. That's correct.  
2 Q. And that's automatic. Right?  
3 A. Yeah.  
4 Q. That's just by virtue of having a boat go on  
5 port risk. There's vessel P&I coverage, but  
6 the crew P&I coverage is cancelled?  
7 A. Is nonexistent.  
8 Q. Is nonexistent. That's your understanding?  
9 A. Yes.  
10 Q. And that's your understanding based upon your  
11 16 years of experience in the industry?  
12 A. Yes.  
13 Q. And someone at OMI told you that. You don't  
14 remember who?  
15 MR. LANGER: Objection. It's been asked  
16 and answered. He's been through this twice  
17 now. Do we need to go through it again?  
18 MR. PETTINGELL: Yeah.  
19 MR. LANGER: Well, I'm going to instruct  
20 him --  
21 MR. PETTINGELL: Well, we're not --  
22 MR. LANGER: -- not to answer that for --  
23 you're -- you're just asking him the same  
24 questions again and again.

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1 MR. PETTINGELL: You know, you're -- you're  
2 breaking my train of thought.  
3 MR. LANGER: Well, I don't mean to do that.  
4 But you've --  
5 MR. PETTINGELL: But --  
6 MR. LANGER: -- been through this --  
7 MR. PETTINGELL: But --  
8 MR. LANGER: -- twice.  
9 MR. PETTINGELL: Let me finish it, and  
10 we'll move on.  
11 MR. LANGER: Good.  
12 MR. PETTINGELL: Can we have my question  
13 read back, please.  
14 MR. ABROMOVITZ: I'll also state -- let me  
15 just state on the record that, in this  
16 jurisdiction, you cannot instruct the witness  
17 not to answer a question. You can suspend the  
18 deposition. You can get a court order and a  
19 protective order. You cannot tell him not to  
20 answer a question.  
21 MR. LANGER: Okay. Then we'll do that.  
22 MR. PETTINGELL: It's not necessary.  
23 Just --  
24 MR. LANGER: Keep going.

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1 MR. PETTINGELL: -- let's get this -- let's  
2 get by this and move on.  
3 (Question read back.)  
4 Q. Is that correct?  
5 A. That's correct.  
6 Q. All right. And my question is, did you, sir,  
7 ever tell Mr. Russo that that's what happened  
8 if the vessel went on port risk coverage, that  
9 the --  
10 A. Yes.  
11 Q. -- would be -- you did tell him that?  
12 A. (Witness indicates).  
13 Q. When did you tell him that?  
14 A. I don't remember exactly when I told him.  
15 Q. Well, do you remember what year?  
16 A. He was on and off port risk so much that it's  
17 hard to recollect exactly when I told him, but  
18 we discussed it.  
19 Q. Now, the Mary & Josephine was covered three  
20 policy years. Right?  
21 A. Not quite three. I don't think it made it  
22 through the third one.  
23 Q. Well, there was three policy years  
24 contemplated?

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1 A. Yes.  
2 Q. And the vessel was on port risk in the first  
3 policy year?  
4 A. Yes.  
5 Q. And coverage was placed through Sunderland?  
6 A. Yes.  
7 Q. Coverage was not placed by Sunderland with  
8 North American Specialty Insurance Company in  
9 that first policy year. It was placed with a  
10 different company, wasn't it?  
11 A. I believe so.  
12 Q. Fairfield?  
13 A. I believe, Fairfield.  
14 Q. All right. And then, in the second policy  
15 year, coverage was placed by Sunderland with  
16 North American Specialty?  
17 A. Correct.  
18 Q. And the vessel went on port risk?  
19 A. Correct.  
20 Q. And there was a third policy issued, wasn't  
21 there?  
22 A. Yes.  
23 Q. And coverage was placed by Sunderland with  
24 North American Specialty?

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1 A. Yes.  
2 Q. And that's the policy where the vessel went on  
3 port risk and was on port risk at the time of  
4 Mr. Russo's injury?  
5 A. Yes.  
6 Q. In each of those years -- now, you've told us  
7 that, in October, I think you said, or sometime  
8 prior to the renewal of coverage -- perhaps, it  
9 would have been earlier than October because  
10 coverage was renewed for Policy Year 3  
11 beginning in August of 2003, wasn't it?  
12 A. Correct.  
13 Q. And I apologize if I asked you this. Do you  
14 remember when Mr. Russo and you had a  
15 conversation where he indicated he wanted the  
16 vessel to go on port risk?  
17 MR. LANGER: Objection. It's been asked  
18 and answered.  
19 MR. PETTINGELL: I'm just trying to --  
20 A. I'm not positive. It could have been in Oc- --  
21 October when he called me.  
22 Q. Okay. Now, you've testified that you -- you  
23 have a memory of a conversation with Mr. Russo  
24 where you told him that if the vessel was on

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1 port risk, there was not going to be any crew  
2 P&I coverage. Did you have that conversation  
3 prior to the vessel going on port risk in 2003?  
4 A. Yes.  
5 Q. Was it in -- was it during the year of 2003?  
6 A. I'm not sure.  
7 Q. Did you have that conversa- -- did you have  
8 such a conversation with Mr. Russo for Policy  
9 Year 2?  
10 A. Possibly.  
11 Q. You don't remember?  
12 A. I don't.  
13 Q. How about Policy Year 1?  
14 A. Yeah. I remember Policy Year 1.  
15 Q. What do you remember about Policy Year 1?  
16 A. I remember that he was put on port risk to make  
17 repairs on his vessel.  
18 Q. Well, I'm restricting my question to that  
19 conversation that you say you had with  
20 Mr. Russo where you told him that if the boat  
21 was on port risk, there would be no crew P&I  
22 coverage. Did you have that -- such a  
23 conversation with Mr. Russo for Policy Year 1?  
24 A. Again, I'm not positive. I'm not sure.

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1 Q. All right. So you're not sure for 1, Policy  
2 Year 1; and you're not sure for Policy Year 2?  
3 A. No.  
4 Q. And you are -- you do have such a recollection  
5 with regards to Policy Year 3?  
6 A. Yes.  
7 Q. And you can't tell us when in 2003 that took  
8 place?  
9 A. Like I said, I believe it took place in our  
10 phone conversation in October.  
11 Q. Okay. Can you tell us how the conversation  
12 went?  
13 A. I took a call from Matt Russo. And, again, he  
14 said that the boat hadn't fished in several  
15 months, was not fishing at that time, and had  
16 no intention of fishing till several months  
17 into the year. And he would call me when the  
18 boat went back actively fishing. And he did  
19 not want any crew P&I on the vessel so he could  
20 save money --  
21 Q. Uh-huh.  
22 A. -- specifically said zero crew.  
23 Q. Right. And at that point, you said to him,  
24 don't worry. If it goes on port -- words to

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1 the effect -- and -- and you don't have to  
2 accept my -- my words -- but words to the  
3 effect that, don't worry; if the boat goes on  
4 port risk, there is no crew P&I coverage?  
5 MR. LANGER: Objection. It's been asked  
6 and answered --  
7 MR. PETTINGELL: Well, it --  
8 MR. LANGER: -- as to what --  
9 MR. PETTINGELL: -- hasn't been --  
10 MR. LANGER: -- he said.  
11 MR. PETTINGELL: -- answered.  
12 MR. LANGER: Yes. It has.  
13 A. No. I wouldn't say that.  
14 Q. But you do have a recollection -- at least, as  
15 I understand your testimony -- of telling that  
16 to Mr. Russo?  
17 A. I believe there's a good chance we had  
18 discussed that because of the -- the nature of  
19 the vessel to --  
20 Q. Well --  
21 A. But I don't remember specifically when.  
22 Q. -- a good chance is different than you having  
23 an explicit recollection of doing something,  
24 sir. And I'm trying to establish whether you

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1 have a memory of saying that to Mr. Russo or  
2 whether you think you did.  
3 A. I said it to Mr. Russo, but I don't remember  
4 when.  
5 Q. What was Mr. Russo's response?  
6 A. As to what?  
7 Q. To your telling him that if the boat was on  
8 port risk, there would not be any coverage for  
9 crew.  
10 A. As long as it wasn't costing him money for crew  
11 P&I, I think he was happy with that.  
12 Q. Do you recall Mr. Russo, at any time during any  
13 of the three policy years, indicating that he  
14 did want to have crew coverage while the vessel  
15 was on port risk?  
16 A. No.  
17 Q. It's your recollection that, for each of the  
18 three policy years, he did not want any crew  
19 coverage whatsoever?  
20 A. Specifically on port risk?  
21 Q. Yes.  
22 A. I don't remember him ever wanting crew  
23 coverage.  
24 Q. Okay. Not for Policy Year 1?

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1 A. No.  
2 Q. Not for Policy Year 2?  
3 A. No.  
4 Q. And you have an express memory not for Policy  
5 Year 3?  
6 A. Correct.  
7 Q. Okay.  
8 MR. PETTINGELL: I'm getting close to the  
9 end, I think. Off the record for a second.  
10 (A brief discussion was held off the  
11 record.)  
12 (Brief recess taken.)  
13 BY MR. PETTINGELL:  
14 MR. PETTINGELL: All right. I only have, I  
15 think, one more area I want to go into. And  
16 there's a document that I seem to have, in my  
17 inimitable style, mislaid. So why don't I pass  
18 the witness to Mr. Abromovitz, and I'll come --  
19 with the understanding I can come back and --  
20 oh, I found it. Too -- too late.  
21 Q. Now, coming back to the fact that there were  
22 three different policies issued in three  
23 different policy years, the first one, I think  
24 we have already established, was issued by

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1 A. I have no idea.  
2 Q. Well, it's because you don't have the document  
3 in front of you.  
4 A. You want me to read the policy number?  
5 Q. Yes.  
6 A. Okay. It would read DMM0000003-00.  
7 Q. And would that refer to the Policy No. 2 that  
8 we've been referring as Policy Year 2, which  
9 would be from August 13th of 2002 to  
10 August 13th, 2004 --  
11 MR. LANGER: Well, the document speaks --  
12 Q. -- '3?  
13 MR. LANGER: -- for itself.  
14 MR. PETTINGELL: I understand.  
15 A. I believe so.  
16 Q. Okay. And I think you've already indicated  
17 that, during that Policy Year No. 2, Mr.  
18 Russo's vessel went on port risk?  
19 A. Correct.  
20 MR. PETTINGELL: Time out.  
21 (A brief discussion was held off the  
22 record.)  
23 Q. Okay. Let me show you a document and ask if  
24 you can look at it.

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1 Fairfield.  
2 A. Correct.  
3 Q. And the next two were North American Specialty.  
4 Each of those policies had different policy  
5 numbers, didn't they, renewal policies?  
6 A. I'm not sure of that. I'm not aware of that.  
7 Q. Well, I show you a letter dated September 17th,  
8 2002 from Lynanne Houde -- and -- and we don't  
9 need to mark that -- and ask you whether that  
10 makes reference to a renewal policy by policy  
11 number.  
12 MR. LANGER: Well, the document speaks for  
13 itself.  
14 MR. PETTINGELL: Well, I understand. But  
15 I'm focusing the witness in on something that  
16 he said he didn't recall.  
17 MR. LANGER: Read the first paragraph to  
18 yourself. For the record, Mr. Pettingell's  
19 referring to a letter dated September 17th,  
20 2002 from Lynanne Houde to Matteo Russo.  
21 A. Okay.  
22 Q. And does that refer to a policy number?  
23 A. Yes.  
24 Q. And that policy number would be what?

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1 MR. PETTINGELL: Would you make some copies  
2 of that? Then we'll make copies of this after.  
3 Off the record.  
4 (A brief discussion was held off the  
5 record.)  
6 (American Institute Port Risk Endorsement  
7 dated 1/18/70 marked as McVey Exhibit  
8 No. 5.)  
9 (Endorsement dated 12/9/02 marked as McVey  
10 Exhibit No. 6.)  
11 Q. Now, looking at what we've just marked as  
12 Exhibit 6, do you have that document before  
13 you?  
14 A. Yes.  
15 Q. Have you had a chance to read it?  
16 A. No. I'm reading it now.  
17 (Pause.)  
18 Q. Let me know, please, when you're finished  
19 looking at it.  
20 A. Finished.  
21 Q. All right. Can you tell us what that document  
22 is marked as Exhibit 6?  
23 A. It looks like an endorsement.  
24 Q. What's an endorsement?

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1 A. An endorsement is something added to an  
2 existing policy.  
3 Q. Would it be fair to say it's a document that's  
4 issued reflecting a policy change of some  
5 sort --  
6 A. Yes.  
7 Q. -- change in coverage?  
8 A. Yes.  
9 Q. To your knowledge, do they always issue when  
10 there's a --  
11 MR. LANGER: Objection.  
12 Q. -- change in coverage?  
13 MR. LANGER: It's been asked and answered.  
14 This was covered in some detail in January.  
15 A. I don't know that they're always issued.  
16 Q. Okay. And looking at the lower right-hand  
17 corner, there's reference to a policy number.  
18 Do you see that?  
19 A. I do.  
20 Q. And would you agree with me, sir, that that  
21 policy number that is referenced there is the  
22 policy number that is for Policy Year No. 2?  
23 A. Yeah. The same.  
24 Q. Okay. What changes does this endorsement

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1 Q. And would you agree, sir, that Exhibit 5 is the  
2 American Institute Port Risk Endorsement  
3 referred to in Exhibit 6?  
4 MR. LANGER: If you know.  
5 A. It's referred to. Yes.  
6 Q. All right. So what's stated on Exhibit 6,  
7 "Adding: American Institute Port Risk  
8 Endorsement" January 18, 1970, what that's  
9 referring to is what has been marked as  
10 Exhibit 5?  
11 A. Correct.  
12 Q. All right. Thank you. Now, coming back to  
13 Exhibit 6, there's also a change with respect  
14 to the crew complement, isn't there?  
15 A. Yes.  
16 Q. It says, "The Crew Complement is amended to  
17 'Crew of 1 excluding Owners.'"  
18 A. Correct.  
19 Q. Now, that language doesn't appear every time a  
20 vessel is put on port risk, does it?  
21 A. No.  
22 Q. That's something that was done just with regard  
23 to Policy No. 2?  
24 A. That's correct.

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1 reflect?  
2 MR. LANGER: Objection. The document  
3 speaks for itself.  
4 A. It says "amended from Operational to Port  
5 Risk."  
6 Q. Okay. And does it reference a particular port  
7 risk endorsement?  
8 A. Yes.  
9 Q. American Institute Port Risk Endorsement dated  
10 January 18, 1970?  
11 A. Yes.  
12 Q. Is that a policy form that you're familiar  
13 with?  
14 A. Somewhat familiar with it.  
15 Q. Well, you've seen it before?  
16 A. Yes.  
17 Q. Looking at the document we've marked as  
18 Exhibit 5, take a moment to look at that.  
19 (Pause.)  
20 A. I've read it.  
21 Q. Okay. Is Exhibit 5 the American Institute Port  
22 Risk Endorsement dated January 18, 1970 that  
23 you're somewhat familiar with?  
24 A. Somewhat.

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1 Q. It says, "The Navigation Limit is amended to:  
2 'Port Risk Only. Warranted No Fishing.'" Do  
3 you --  
4 A. Yes.  
5 Q. -- see that? Is that something that does  
6 appear routinely on -- on endorsements when a  
7 vessel goes on port risk?  
8 A. Yes.  
9 Q. All right. And reading down a little further,  
10 "Endorsement Section I & II, ALL OTHER TERMS  
11 AND CONDITIONS REMAIN UNCHANGED." Do you see  
12 that language?  
13 A. Yes.  
14 Q. Do you know what that means?  
15 A. Yes.  
16 Q. What does it mean?  
17 A. Just what it says it means.  
18 Q. Well, can you explain to us?  
19 MR. LANGER: What is his understanding?  
20 I'm -- I'm --  
21 MR. PETTINGELL: Well, he said he's  
22 somewhat familiar with port risk. He said  
23 he's -- he said port risk doesn't provide a  
24 crew P&I cover. I think I'm entitled to

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1 inquire as to his knowledge in this.  
2 MR. LANGER: I'm -- I'm concerned. It --  
3 it goes back to that this deposition is limited  
4 to five -- six questions. And when we decided  
5 last January if you wanted to ask outside those  
6 six questions to avoid coming back another  
7 time, I would allow that; but it would not be  
8 binding on NAS. And I want to make sure that  
9 that's -- agreement is still in effect.  
10 Because it's not within --  
11 MR. PETTINGELL: I believe you have  
12 designated Mr. Scola as the 30(b)(6) designate  
13 to talk about --  
14 MR. LANGER: Port risk.  
15 MR. PETTINGELL: -- the scope of port risk  
16 coverage.  
17 MR. LANGER: I have.  
18 MR. PETTINGELL: Yes.  
19 MR. LANGER: Okay.  
20 MR. PETTINGELL: And when I question  
21 Mr. Scola, he will be binding on himself  
22 individually and on NAS. Mr. McVey is not  
23 binding on NAS with what he says. But he  
24 certainly is going to bind himself. And he's

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1 testified that, based upon his 16 years'  
2 experience in the industry -- well, I don't  
3 have to repeat that.  
4 MR. LANGER: I understand what he's  
5 testified to. I just --  
6 MR. PETTINGELL: So --  
7 MR. LANGER: -- want to make it --  
8 MR. PETTINGELL: -- I asked --  
9 MR. LANGER: -- clear that you're outside  
10 the scope of any of the questions as far as  
11 Mr. McVey is concerned.  
12 MR. PETTINGELL: No. As far as NAS is  
13 concerned.  
14 MR. LANGER: Well, as far as NAS and how  
15 they've designated Mr. McVey.  
16 MR. PETTINGELL: Agreed.  
17 MR. LANGER: Right.  
18 MR. PETTINGELL: Joe, do you agree with  
19 that?  
20 MR. ABROMOVITZ: Sure.  
21 MR. PETTINGELL: Okay.  
22 Q. I think my question was to the phrase "ALL  
23 OTHER TERMS AND CONDITIONS REMAIN UNCHANGED."  
24 What's your understanding of what that means,

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1 sir?  
2 A. Whatever the conditions and terms were of the  
3 port risk endorsement that -- that remain  
4 unchanged.  
5 Q. Of the port risk endorsement, sir? Or Policy  
6 No. DMM000003-00?  
7 A. I'm not quite sure if it -- if it pertains to  
8 that or the policy that you mentioned or if  
9 it's the port risk policy.  
10 Q. Okay. Well, let me ask you to look at Exhibits  
11 5 and 6. Do you have them?  
12 A. Yes.  
13 Q. Could you tell me where, in Exhibits 5 and 6,  
14 the endorsements that pertain to the vessel  
15 going on port risk, there's an indication  
16 that -- if there is one -- that there is no  
17 crew P&I cover as a result of the vessel going  
18 on port risk?  
19 A. And which document are we referring to?  
20 Q. Well, you've got 5 and 6. Those are the two  
21 endorsements that pertain to the vessel going  
22 on port risk.  
23 A. Document No. 6 refers to a "Crew Complement  
24 amended to Vrew of 1 excluding Owners."

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1 Q. Right. But we've already established that that  
2 is not a -- that is not language that appears  
3 in every instance. That was something specific  
4 to what Mary & Josephine Corp. was requesting  
5 for Policy Year 2.  
6 (Pause.)  
7 A. I'm assuming that's "ALL OTHER TERMS AND  
8 CONDITION REMAINS UNCHANGED" are pertaining to  
9 Paragraph 1 and 2 of the property risk  
10 endorsement.  
11 Q. Okay. Do you know that to be true, sir?  
12 MR. LANGER: Objection. He's answered the  
13 question.  
14 MR. PETTINGELL: Well, he used the word  
15 "assume." I just want to establish whether he  
16 knows that to be true or whether he's just  
17 making an assumption 'cause he doesn't know.  
18 MR. LANGER: If you know, tell him.  
19 A. Yeah.  
20 MR. LANGER: If you don't know, say you  
21 don't --  
22 A. I would say yes.  
23 Q. You do know that?  
24 A. Yeah.

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1 Q. That's what it refers to?  
2 A. Right.  
3 MR. PETTINGELL: Okay. Thank you. I'll  
4 pass the witness.  
5 MR. ABROMOVITZ: Sure.  
6 CROSS-EXAMINATION  
7 BY MR. ABROMOVITZ:  
8 Q. Mr. McVey, as you know, my name is Joe  
9 Abromovitz. I represent Matthew Russo in this  
10 matter. I just have a few questions. Let me  
11 start with Exhibit No. 6. Is it your testimony  
12 that the port risk endorsement that changes the  
13 crew complement to, quote, "Crew of 1 excluding  
14 Owners," end quote, excluded coverage, P&I  
15 coverage, to Matthew Russo in this case?  
16 A. If it was --  
17 MR. LANGER: At -- wait a minute. At what  
18 period of time?  
19 Q. At the time of the accident. Well, let me --  
20 let me ask -- strike -- strike the question.  
21 Was a similar port risk endorsement issued  
22 relative to Policy No. 3 for the year August  
23 '03 to August '04?  
24 A. No.

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1 Q. Why not?  
2 A. Because Matt specifically asked for zero crew.  
3 Q. Was there a written port risk endorsement at  
4 all issued for Policy Year No. 3, August '03 to  
5 August '04?  
6 A. I'm not sure.  
7 Q. Who would know that?  
8 A. Lynn would probably know that.  
9 Q. Okay. Is it your experience that any time a  
10 vessel goes on port risk that there should be a  
11 written document reflecting a port risk  
12 endorsement that's issued by the underwriter?  
13 A. Yes.  
14 Q. And the underwriter in this case is NAS?  
15 A. Sunderland or NAS. I deal with Sunderland, not  
16 NAS.  
17 Q. Do you know who, with reference to Exhibit 6,  
18 do you know who issued Exhibit 6?  
19 A. I'm pretty sure Sunderland would.  
20 Q. Why would the endorsement such as Exhibit  
21 No. 6 come from Sunderland and not North  
22 American Specialties when North American  
23 Specialties appears on the bottom of Exhibit 6?  
24 A. I'm really not too familiar with their

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1 relationship as far as how they do business.  
2 I -- I deal with Sunderland. I don't deal with  
3 NAS.  
4 Q. In this particular case, with reference to  
5 Policy Year No. 2 and Exhibit No. 6, is this a  
6 document that is actually generated not by your  
7 company, but by either Sunderland or North  
8 American Specialties?  
9 A. This document would be generated by one of  
10 them.  
11 Q. Okay. On the request from somebody --  
12 A. From us.  
13 Q. -- in your office?  
14 A. Yes. From -- from OMI.  
15 Q. Okay. Have you seen a port risk endorsement  
16 for Policy Year No. 3 -- this is the period of  
17 August '03 to August '04 -- relative to the  
18 Mary & Josephine?  
19 A. I have not.  
20 Q. So you don't know whether one actually exists  
21 or not. Correct?  
22 A. Correct.  
23 Q. Let me go back to some of your earlier  
24 testimony today. I believe you testified that

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1 there's -- there's a concept in the marine  
2 insurance called vessel P&I and then a separate  
3 concept called crew P&I; is that correct?  
4 A. That's correct.  
5 Q. How do you define vessel P&I?  
6 A. I would, pretty much, define that as a -- a  
7 liability policy, third-party liability policy.  
8 Q. Okay. Meaning -- meaning --  
9 A. Affecting --  
10 Q. -- what --  
11 A. -- the conc- --  
12 Q. -- in the conte- --  
13 A. Affecting anything but the vessel itself,  
14 something outside the vessel.  
15 Q. All right. So let -- let's assume that, in the  
16 Policy Year -- strike that. And it's your  
17 further testimony that, at the time of Matt  
18 Russo's accident, the Mary & Josephine -- the  
19 fishing vessel Mary & Josephine did not have  
20 crew P&I, but had vessel P&I. Correct?  
21 A. Correct.  
22 Q. All right. And that means that if a crew  
23 member was injured aboard the vessel, there  
24 would be no coverage?

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1 A. Correct.

2 Q. But let's say I went and visited Matt Russo,

3 who was working on the boat during the period

4 of time that that vessel P&I was in effect, and

5 I got hurt due to some defective condition on

6 the vessel and I'm not a member of the crew,

7 would I be covered?

8 MR. LANGER: Objection. Calls for a legal

9 conclusion.

10 MR. ABROMOVITZ: Well, I'm asking his

11 understanding.

12 A. I would say, probably.

13 Q. Okay. And let's assume that the -- during the

14 same period of time -- this is when the vessel

15 is covered under vessel P&I and not crew P&I

16 when the vessel's tied up at the dock -- let's

17 assume that, through something done by

18 Mr. Russo as captain of the boat, the dock is

19 actually damaged. Would the vessel be covered

20 for damage to the dock, your understanding?

21 MR. LANGER: The same objection. It calls

22 for a legal conclusion.

23 A. I believe it would.

24 Q. Okay. Have you seen anything in any of the

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1 policies that were issued through your company

2 that were in effect -- this is a policy or

3 endorsement -- that were in effect for the

4 period of August '03 to August '04 that defines

5 vessel P&I coverage in the manner in which

6 you've defined it?

7 A. I haven't seen anything that I recollect. No.

8 Q. Have you seen anything in the policies -- and,

9 again, I'm referring to Policy -- for policy

10 year '03, August '03 to August '04 -- have you

11 seen anything in the policy that says there was

12 no crew coverage for P&I during that policy

13 year?

14 A. We have a document here from Sunderland that

15 says that there was no crew P&I.

16 Q. What document are you referring to, sir?

17 A. I think it was a letter that he sent to me.

18 Q. Are you referring to Exhibit No. 3?

19 A. Yes.

20 Q. Okay. How about in the insurance policy

21 itself, have you seen anything in the insurance

22 policy or any endorsement issued by or on

23 behalf of NAS that says there was no crew

24 coverage for P&I while this vessel was at the

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1 dock in December of '03 when Matt Russo was

2 injured?

3 A. I haven't seen it.

4 Q. Let's go to Exhibit No. 6, which is the

5 preceding policy year, the policy year of

6 August '02 to August of '03. What is your

7 understanding as what is meant by -- with

8 reference to a port risk endorsement of "Crew

9 of 1 excluding Owner"?

10 A. Sometimes, in a situation where we know there's

11 going to be somebody on the vessel,

12 particularly if a crewman's on there as a

13 watchman or he's doing work, we suggest that

14 they keep one guy covered.

15 Q. Were you aware that at the time of Matt Russo's

16 accident in December 2003 that what Mr. Russo

17 was doing was carrying out one of the repairs

18 that was recommended by the surveyor of the

19 vessel?

20 A. I was not aware of that.

21 Q. Did your office arrange for the survey on the

22 vessel for that particular policy year?

23 A. Possibly.

24 Q. Would that be something that, given your

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1 relationship with Sunderland or NAS, if a

2 survey was requested by the underwriter that

3 your office would arrange?

4 A. It -- it could be done automatically.

5 Q. Okay. Would -- you're familiar with Marine

6 Safety Consultants, are you not?

7 A. Yes.

8 Q. Are you aware that they had done a survey on

9 this particular vessel?

10 A. At what time?

11 Q. In connection with the repairs that were being

12 carried out to the outriggers at the time of

13 Matt Russo's accident.

14 A. Was I aware at what point?

15 Q. Sure. Let me ask the question this way.

16 A. Please.

17 Q. Matt Russo was injured during the course of

18 performing some work in connection with

19 installing new outriggers while the vessel was

20 at the dock in Gloucester. Correct?

21 A. I believe so. I'm not exactly sure what he was

22 doing. But --

23 Q. Well, take a look at your Exhibit No. 2, which

24 is your e-mail to Janet at Sunderland dated 05

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1 December of 2003. And take a look at the last  
2 paragraph of that -- of that letter. And I'll  
3 quote into the record. "A brief synopsis of  
4 the accident: They were installing new  
5 outriggers at the dock and Matt was atop  
6 outrigger measuring the stays when the cleat  
7 holding the outrigger let go and crashed down  
8 with Matt on top of it."  
9 Did I read that correctly?  
10 A. Yes.  
11 Q. Do you know why it was that Matt Russo was  
12 installing new outriggers at the time of his  
13 accident?  
14 A. No.  
15 Q. Where did you get the information that that's  
16 the work that Matt was performing at the time  
17 he was hurt?  
18 A. From Matt himself.  
19 Q. And this is during your telephone conversation  
20 with him when he was in the hospital?  
21 A. Yes.  
22 Q. Was there anything of which you're aware in the  
23 Sunderland policy that prevented the captain of  
24 the boat from carrying out some of the repairs

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1 recommended by the surveyor when performing the  
2 survey at a request of an underwriter such as  
3 NAS?  
4 A. Repeat that again, please, Joe.  
5 Q. Sure. I'm going to ask you to assume that at  
6 the time Matt Russo got hurt that the out- --  
7 new outriggers were being installed on the  
8 recommendation of the surveyor, Marine Safety  
9 Consultants.  
10 Assuming that to be so, was there anything  
11 under the Sunderland pol- -- strike that --  
12 anything under the NAS policy that was in  
13 existence at the time of Matt Russo's accident  
14 from August '03 to August '04 that said, if  
15 Matt Russo gets hurt while performing this  
16 work, there is no coverage?  
17 MR. LANGER: Objection. Calls for a legal  
18 conclusion.  
19 Q. Your understanding of the policy.  
20 A. My understanding of the pol- -- he would not be  
21 covered if he --  
22 Q. Why not?  
23 A. -- got hurt. Because he specifically asked me  
24 to drop all crew -- crew P&I from his policy on

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1 the Mary & Josephine to save money.  
2 Q. Can you show me anything in the policy itself  
3 or any endorsements issued in connection with  
4 the policy that support your position?  
5 A. No.  
6 Q. Now, assuming there is nothing in writing to  
7 support your position that there was no crew  
8 coverage for Matt Russo, was there anything in  
9 the policy or any of the endorsements to the  
10 policy that prevented a crew member aboard the  
11 vessel, such as Matt Russo, from carrying out  
12 the recommendations made by the surveyor?  
13 MR. LANGER: You mean, regardless of  
14 whether there was coverage or not?  
15 Q. Let's start with regardless of whether there  
16 was coverage or not.  
17 A. It -- it's his vessel. He could do whatever he  
18 wants.  
19 Q. Okay. And assuming there was nothing in the  
20 policy that says Matt Russo was not covered at  
21 the time he was hurt, is there anything else in  
22 the policy that says, if Matt Russo was injured  
23 during the work -- doing the work recommended  
24 by the surveyor, he would not be covered?

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1 A. Not that I'm aware of.  
2 Q. Is it fair to say that, in your dealings with  
3 the Mary & Josephine Corporation insofar as  
4 insurance coverage being placed for the vessel  
5 Mary & Josephine, you dealt primarily with Matt  
6 Russo?  
7 A. Correct.  
8 Q. Did you deal with Sal Russo at all?  
9 A. No.  
10 Q. Have you ever had a conversation with Sal  
11 Russo?  
12 A. No.  
13 Q. How about Matt Russo's brother Gerry, have you  
14 ever -- ever had any conversations with Gerry  
15 concerning placement of insurance coverage  
16 aboard the -- or for the fishing vessel Mary &  
17 Josephine?  
18 A. No.  
19 Q. Is it fair to say that if Matt Russo needed to  
20 contact somebody on behalf of the underwriter,  
21 he would contact someone in your office, OMI?  
22 A. Yes.  
23 Q. And you would be the principal contact for Matt  
24 Russo?

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1 A. Yes.  
2 Q. And that's the nature of the relationship that  
3 you fellows had during the couple of years that  
4 you did business together?  
5 A. Correct.  
6 Q. It's your testimony that Matt Russo requested  
7 an endorsement, in your conversation in early  
8 August '03, excluding all crew P&I for the  
9 fishing vessel Mary & Josephine. Correct?  
10 A. He didn't use the word "endorsement."  
11 Q. Well, let me ask the question this way. It's  
12 your testimony that during your conversation in  
13 early October 2003 that Matt Russo requested  
14 that because the vessel was on port risk that  
15 there be no P&I coverage?  
16 A. That's correct.  
17 Q. Yet, two months later, as of the time of his  
18 accident, no endorsement had issued from the  
19 company to that effect; is that correct?  
20 A. I believe so.  
21 Q. Do you know why that is?  
22 A. Well, I -- I do. I can -- part of the reason  
23 is, when -- it's called a lay-up credit; and we  
24 usually wait till he tells us the boat's going

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1 back fishing so we can prevent a lot of  
2 paperwork from -- if he says, I'm not going or  
3 I'm going. So we usually wait till he says the  
4 boat is off port risk. Then we calculate the  
5 time and the monies involved and return him  
6 lay-up credits.  
7 Q. How -- how much work is involved in issuing an  
8 endorsement saying there is no crew coverage?  
9 A. I don't issue them. So I really don't know.  
10 Q. Is that Lynn Houde's job?  
11 A. Yes.  
12 Q. And when a customer such as Matt Russo requests  
13 the elimination of crew coverage, is it your  
14 job then to communicate that information to  
15 Lynn Houde, who then deals with the underwriter  
16 in generating the paperwork?  
17 A. That's correct.  
18 Q. Now, in this particular case, is it your  
19 testimony that you -- you communicated to Lynn  
20 Houde the request of Matt Russo that crew  
21 coverage be eliminated during the period the  
22 vessel was on port risk in this third policy  
23 year?  
24 A. Yes.

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1 Q. Was there anything in writing that you gave  
2 her, either written or e-mail or anything to  
3 that effect?  
4 A. I believe it was done by phone call or in  
5 person.  
6 Q. Okay. And so the answer to my question is,  
7 there is no written memo or e-mail from Bob  
8 McVey to Lynn Houde to the effect of, Matt  
9 Russo wants you to take P&I coverage off the  
10 vessel while it's on port risk. Is that  
11 statement correct?  
12 A. That's correct.  
13 Q. And it was Lynn's job then to communicate the  
14 desire of the vessel owner to the underwriter  
15 to effect the issuance of an endorsement.  
16 Correct?  
17 A. That's correct.  
18 Q. And it wasn't done in this case either because  
19 she hadn't gotten around to it, or she didn't  
20 do her job properly. Correct?  
21 MR. LANGER: Objection.  
22 A. No. I wouldn't --  
23 MR. LANGER: Mischaracterize it.  
24 A. -- say that.

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1 MR. LANGER: It mischaracterizes the  
2 testimony and assumes facts not in evidence.  
3 And it's argumentative.  
4 Q. Let me ask the question this way. Have you  
5 seen anything in writing, by way of a memo,  
6 e-mail, anything, going from Ms. Houde to  
7 either Sunderland or NAS wherein it was  
8 communicated to the underwriter that the vessel  
9 owner wanted to eliminate crew P&I during the  
10 period of time that the vessel was on port  
11 risk?  
12 A. Yes.  
13 Q. Where did you see it?  
14 A. I thought we had one of these documents here  
15 that was sent, this one dated October 3rd,  
16 "Dear Tracy."  
17 MR. LANGER: It's Exhibit 4.  
18 A. Exhibit 4.  
19 Q. Okay. Where in this document do you read a  
20 communication from Lynn Houde to Tracy that  
21 says the vessel owner wants no P&I coverage  
22 while the vessel is on -- P&I crew coverage  
23 while the vessel is on port risk?  
24 A. It says, "Insured just called to let us know

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1 the vessel has not been fishing since May 1st,  
2 2003. He forgot to call us earlier. The  
3 account did renew on 8/13/03."  
4 Q. So where does it say that Matt Russo is asking  
5 that the company issue an endorsement for port  
6 risk coverage different than was issued the  
7 previous year, as reflected in Oc- -- in -- in  
8 Exhibit No. 6?  
9 A. It -- it doesn't. I think he followed up with  
10 a phone call to Lynn.  
11 Q. You're saying that Matt Russo called Lynn  
12 sometime after October 3rd, 2003?  
13 A. No. I think it was on October 3rd.  
14 Q. So the same day that you spoke to Matt Russo  
15 about what his desires were with coverage, you  
16 believe that Matt Russo also spoke to Lynn  
17 Houde?  
18 A. Yes.  
19 Q. Why do you say that?  
20 A. Because I think I instructed Matt to call Lynn  
21 to tell her direct. I might have been on the  
22 road, driving in my vehicle. And I probably  
23 told him, why don't you call Lynn and -- which  
24 we do often because Lynn is the one that would

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1 be taking care of that end of the policy.  
2 Q. And did Lynn tell you that she, in fact, spoke  
3 with Matt Russo on October 3rd, 2003?  
4 A. Yes.  
5 Q. And what did she tell you that he said to her?  
6 A. He reiterated what he said to me, that he  
7 didn't want any crew coverage.  
8 Q. Have you seen any communications between Lynn  
9 Houde and -- strike that. First of all, who is  
10 Tracy, Tracy Tate at SM?  
11 A. That's Sunderland.  
12 Q. Okay. Other than this fax, Exhibit 4, dated  
13 October 3rd, 2003, have you seen any  
14 communications between Lynn Houde and  
15 Sunderland Marine referencing the desire of  
16 Matt Russo, on behalf of M & J Corporation, to  
17 eliminate crew coverage for P&I while the  
18 vessel was on port risk?  
19 A. I haven't. But I very rarely do see -- see  
20 correspondence between Lynn and Sunderland.  
21 Q. So are you saying there may be additional  
22 correspondence that's not been produced in  
23 connection with this case?  
24 MR. LANGER: Objection.

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1 A. There could be.  
2 Q. Do you know why any --  
3 A. I don't see how -- why --  
4 Q. -- additional --  
5 A. No.  
6 Q. -- correspondence has not been produced  
7 that's --  
8 A. I don't think --  
9 Q. -- been requested?  
10 A. I don't know --  
11 MR. LANGER: Objection.  
12 A. -- if there is correspondence. As I said, I  
13 don't see it. So I don't know what's there.  
14 Q. Okay. Let's go to your e-mail to Janet of  
15 December 5th, 2003. Do you have that in front  
16 of you, Mr. McVey?  
17 A. Yes. I do.  
18 Q. Okay. Prior to sending this e-mail, what, if  
19 anything, did you review in connection with the  
20 policy of insurance issued through your office  
21 for the Mary & Josephine Corporation regarding  
22 the fishing ves- -- fishing vessel Mary &  
23 Josephine for the policy year Aug- -- August  
24 '03 to August '04?

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1 A. I believe I reviewed his application.  
2 Q. Did you look at the policy itself?  
3 A. I don't recollect if I did or not.  
4 Q. Insofar as the filing system as maintained in  
5 the offices of OMI in the time frame of  
6 December '05, would there be a -- do you have a  
7 separate folder per policy year per vessel? Or  
8 how do you guys file?  
9 A. We have a -- a file that contains all the  
10 policy years, a single file.  
11 Q. Okay. And when a vessel owner such as --  
12 strike that. Are you saying there was a single  
13 file for the M & J -- Mary & Josephine  
14 Corporation for the fishing vessel Mary &  
15 Josephine from the very beginning of the  
16 placement of the coverage through the last  
17 policy issued?  
18 A. Yes.  
19 Q. Okay. Did you look through that file prior to  
20 sending the e-mail on December 5th, 2003,  
21 Exhibit No. 2?  
22 A. I -- I probably did.  
23 Q. Okay. And is it fair to say you saw no written  
24 endorsement in connection with that policy that

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1 eliminated crew coverage for that policy year,  
2 P&I crew coverage?  
3 A. That's correct.  
4 Q. Now, let's go to the third paragraph of your  
5 letter. You testified that it was your opinion  
6 when you wrote this e-mail that there was no  
7 insurance to cover Matt Russo's accident?  
8 A. Yeah.  
9 Q. Then why did you go on to say, quote, "If all  
10 goes well, hopefully, we can keep this claim  
11 within reason given the nature of the  
12 injuries," end quote?  
13 A. Because what we were prepared to do, as an  
14 agency and with Sunderland, was to help Matt  
15 out financially regardless of whether he was  
16 covered or not, which we do --  
17 Q. Did you do that?  
18 A. -- which we do often.  
19 Q. Did you do that in this case?  
20 A. Matt rebuffed our efforts.  
21 Q. Did you ever pay any of Matt Russo's medical  
22 bills?  
23 A. Not that I'm aware of.  
24 Q. In what way did Matt rebuff your efforts to

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1 e-mail to Janet.  
2 A. Well, there was some ambiguity as to far as --  
3 as far as if Matt was an owner. As she  
4 mentions in here from correspondence with  
5 Marine Safety, they was under the impression  
6 that Matt was an owner. I went and looked up  
7 his policy and -- and straightened out that  
8 situation, said he was not a owner, that Sal  
9 was a hundred-percent owner.  
10 Q. Why was that significant?  
11 A. Excuse me?  
12 Q. Why was that significant, whether Matt was an  
13 owner or not?  
14 A. Because, if he was an owner, he probably  
15 wouldn't have been covered under the policy.  
16 Q. Was that typical in connection with insuring  
17 fishing vessels out of the port of Gloucester  
18 in that time frame?  
19 A. I wouldn't specify Gloucester. It was  
20 significant to most fishing vessels.  
21 Q. Okay. Most fishing vessels that were insured  
22 through your agency in the time frame of 2003  
23 excluded P&I coverage for owners who were also  
24 crew members?

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1 help him out, as you do in cases like this?  
2 A. He went and hired an attorney.  
3 Q. Oh. You've never done that, Mr. McVey? That's  
4 withdrawn.  
5 A. I didn't say it was a bad thing. I just said  
6 he went and hired an attorney.  
7 MR. PETTINGELL: Lawyers have to eat too,  
8 you know. Off the record.  
9 Q. Isn't it true, Mr. McVey, that you -- when you  
10 wrote this e-mail to Sunderland on December 5th,  
11 2003, it was your opinion that there was  
12 coverage under the P&I policy for Matt Russo's  
13 injuries? Isn't that a fact?  
14 A. No. I'd say it was ambiguous.  
15 Q. Did you indicate any of that ambiguity in the  
16 body of your e-mail? And Exhib- --  
17 MR. LANGER: Objection.  
18 Q. -- we're referring to Exhibit No. 2.  
19 MR. LANGER: The document speaks for  
20 itself.  
21 A. This is taken -- if it was taken in the context  
22 of which this was sent to Janet, then it takes  
23 on a different meaning as it is on paper.  
24 Q. So tell me the context in which you sent this

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1 A. Yes.  
2 Q. Okay. And you learned that Matt Russo was not  
3 an owner, but he was a crew member?  
4 A. Correct.  
5 Q. In what other way was -- give me the other  
6 contexts in which -- strike the question.  
7 Other than addressing the issue of whether Matt  
8 Russo was or was not a part-owner of the  
9 corporation called the Mary & Josephine  
10 Corporation, what else were you attempting to  
11 convey to Janet at Sunderland Marine by your  
12 e-mail of December 5th, 2003?  
13 A. I was just trying to clarify. When the boat  
14 was operational, they were insured for three to  
15 four men, including Matt, for the policy when  
16 it was operational, and to also let them know  
17 that he wasn't a -- he wasn't an owner. Excuse  
18 me. I was just making clarifications on the  
19 policy which she might have asked for earlier.  
20 Q. Okay. Can we agree that during the period of  
21 time that the policy did cover Matt Russo as  
22 captain of the vessel that he was one of the  
23 three or four men that was contemplated to  
24 be -- to be within the scope of the P&I

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1 coverage?  
2 MR. LANGER: Objection. Seeks a legal  
3 conclusion.  
4 Q. Your understanding of the policy as it was  
5 issued.  
6 A. Yes. He would be. Excuse me.  
7 Q. As of the time frame of December 2003, in your  
8 experience, Mr. McVey, was it unusual for a  
9 captain or crew members of -- of the vessel to  
10 be carrying out recommendations made by a  
11 surveyor?  
12 MR. LANGER: Objection to the form of the  
13 question.  
14 A. Repeat that again.  
15 Q. Sure.  
16 A. I don't -- I don't . . .  
17 Q. Let's -- let me start the question this way.  
18 Is it fair to say that, prior to the issuance  
19 of this particular policy starting in August  
20 2003 to August 2004, you were not aware of any  
21 edict or order that came down from NAS that  
22 said, we will not insure this vessel unless  
23 certain survey recommendations are carried out?  
24 A. I'm not aware of that.

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1 Q. And as of December of 2003, is it fair to say  
2 you had been in the marine insurance industry  
3 for more than ten years?  
4 A. Correct.  
5 Q. And is it also fair to say that, during that  
6 more than ten years of experience, you've had  
7 many situations in which surveyors made  
8 recommendations to insurers that the vessel  
9 undergo certain repairs before the insurance  
10 attaches?  
11 A. That's correct.  
12 Q. And is it also fair to say that during your  
13 ten-plus years of experience as of that time  
14 that you were aware that, many times, the  
15 actual repairs that are recommended by the  
16 surveyor are carried out by the crew of the  
17 vessel?  
18 A. That's correct.  
19 Q. So there would be nothing unusual with Matt  
20 Russo carrying out a surveyor recommendation as  
21 of the time of his injury in December of 2003?  
22 A. No.  
23 Q. My statement's correct?  
24 A. Yeah. It's correct.

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1 Q. Have you been involved in other cases where  
2 there was coverage when a crew member was  
3 injured while a vessel was at port and  
4 recommendations made by a surveyor were being  
5 carried out?  
6 A. Not that I'm aware.  
7 MR. LANGER: Hold on. Do you mean that  
8 while it was in operational coverage or port  
9 risk coverage?  
10 Q. Any coverage.  
11 A. You have to repeat that again, please.  
12 Q. Sure. Is Matt Russo the first crew member of a  
13 vessel that was injured, in -- in your  
14 experience as an insurance agent, when a vessel  
15 was undergoing repairs while at -- at a dock?  
16 A. I don't believe he was the first.  
17 Q. Okay. Do you remember other cases where that  
18 occurred?  
19 A. I don't, specifically. But I know we've had  
20 claims where people were working on the vessel  
21 at the dock.  
22 Q. Other cases where the underwriter was NAS?  
23 A. That, I'm not sure of.  
24 Q. Other cases where coverage was denied because

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1 there was no crew P&I coverage while the vessel  
2 was at port risk?  
3 A. I'm not sure of that either.  
4 Q. Would your office have files that would reflect  
5 that?  
6 A. Possibly.  
7 Q. During the time frame of August '03 to August  
8 '04, what other underwriters did your office  
9 represent in connection with issuing P&I  
10 policies for commercial fishing vessels?  
11 A. At that time, I think it was Fireman's Fund and  
12 Sunderland Marine. I think that was the only  
13 two.  
14 Q. Okay. And do you know, roughly, how many  
15 vessels were insured through your office for  
16 P&I coverage in that time frame?  
17 A. I don't.  
18 Q. Can you give me a range?  
19 MR. LANGER: Don't guess. If you don't  
20 know . . .  
21 A. I don't know.  
22 Q. More than a hundred?  
23 A. More than a hundred.  
24 Q. More than 200?

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1 A. More than 200.  
2 Q. Did your office write risks primarily for  
3 vessels fishing in the north Atlantic?  
4 A. Yes.  
5 Q. And did it write risks for vessels  
6 participating in not only the dragging trades,  
7 but also scalloping and lobstering?  
8 A. That's correct.  
9 Q. What percentage of the vessels that were  
10 underwritten in that time frame were  
11 underwritten by NAS or Sunderland entities  
12 rather than Fireman's Fund?  
13 A. I really don't know.  
14 Q. Was it 50/50?  
15 A. I don't --  
16 MR. LANGER: Objection.  
17 A. -- believe so. It's probably -- could be --  
18 MR. LANGER: Don't guess.  
19 A. I don't know.  
20 Q. More Sunderland than Fireman's Fund?  
21 A. More Fireman's Fund, I believe.  
22 Q. In your experience, how did the Fireman's Fund  
23 policies for P&I coverage differ from the NAS  
24 or Sunderland policies?

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1 A. I don't believe there's much difference.  
2 Q. And when your office would underwrite a policy  
3 of insurance in the time frame of August '03 to  
4 August '04, did you have any written  
5 instructions from either Fireman's Fund or  
6 Sunderland as to what to write and when to  
7 write?  
8 A. Could you be a little more specific --  
9 Q. Sure.  
10 A. -- please?  
11 Q. Sure. To your knowledge, in -- in order to  
12 underwrite insurance, let's say, for Fireman's  
13 Fund, did you do that pursuant to some written  
14 agreement with Fireman's Fund?  
15 A. Yes.  
16 Q. And were there some guidelines that Fireman's  
17 Fund provided to your office in terms of when  
18 to insure a vessel and when -- when to insure a  
19 vessel and when not to insure a vessel?  
20 A. There could be, but I'm not aware of anything  
21 specific.  
22 Q. How about the arrangement with Sunderland or  
23 NAS, was that also pursuant to a written  
24 agreement?

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1 A. I have no idea.  
2 Q. Who made those arrangements?  
3 A. Sunderland and NAS.  
4 Q. I'm sorry. How about -- with referen- --  
5 when -- in this particular case, did you  
6 consider the underwriter to be NAS or  
7 Sunderland?  
8 A. Sunderland.  
9 Q. And in connection with your office as doing  
10 business with Sunderland, did you have some  
11 sort of written agreement with them insofar as,  
12 you know, when to write a risk and when not to  
13 write a risk?  
14 A. We have a contract, but not specifically  
15 involving particular risks.  
16 Q. Okay. And the contract you have with  
17 Sunderland is of a similar nature of the  
18 contract that you have with Fireman's Fund?  
19 A. Similar.  
20 Q. Did you ever generate any document yourself or  
21 cause to be generated any document that was  
22 directed to the Mary & Josephine Corporation  
23 that informed the Mary & Josephine Corporation  
24 that when its vessel was on port risk, there

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1 was no P&I crew coverage?  
2 A. At any time? Or --  
3 Q. Before this accident, December 5th, 2003 -- or  
4 December 3rd, 2003.  
5 A. I believe so.  
6 Q. Okay. And is this a document that came from  
7 you?  
8 A. No. It wouldn't have came from me personally.  
9 No.  
10 Q. Okay. Let me -- let me start with the  
11 question, and let me break it down a little  
12 bit. Did you ever cause any type of  
13 communication in writing to be issued under --  
14 under your name "Bob McVey" on behalf of -- of  
15 OMI to anybody on behalf of the Mary &  
16 Josephine Corporation prior to December 5th,  
17 2003 to the effect that when a vessel was on  
18 port risk, there was no crew P&I available?  
19 A. I don't believe so.  
20 Q. Did you ever direct anybody, prior to  
21 December 3rd, 2003, to direct any such  
22 communication to anybody on behalf of the Mary  
23 & Josephine Corporation that said, in  
24 substance, that when a vessel is on port risk,

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1 there is no crew P&I coverage?  
2 A. Yes.  
3 Q. Okay. Who did you direct to issue such a  
4 communication?  
5 A. Probably, Ms. Houde.  
6 Q. And do you remember when that was?  
7 A. We've had so many changes with this particular  
8 vessel that I'm really -- couldn't pinpoint it.  
9 Q. Have you ever seen any such document issued by  
10 Ms. Houde to the owners of the Mary & Josephine  
11 Corporation dated before December 2 --  
12 December 3, 2003 to the effect that when your  
13 vessel is on port risk, there is no crew P&I  
14 coverage?  
15 A. I don't recollect that specifically.  
16 Q. All right. If there was such a document, you'd  
17 expected it to be in the -- you'd expect it to  
18 be in the file for the Mary & Josephine  
19 Corporation as regards the fishing vessel Mary  
20 & Josephine. Correct?  
21 A. I would expect that. Yeah.  
22 Q. I believe, in response to one of  
23 Mr. Pettingell's questions, you've indicated  
24 that, in your conversation with Matt Russo in

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1 regarding the insurance for the vessel prior to  
2 December 3rd, 2003?  
3 A. I don't believe so.  
4 Q. Do you know if Lynn Houde did?  
5 A. I'm not sure.  
6 Q. Has she ever told you that she did?  
7 A. No.  
8 Q. Did Bill Scola indicate to you whether he ever  
9 discussed underwriting issues with Matt Russo  
10 between October 3rd, 2003 and December 3rd,  
11 2003?  
12 A. No.  
13 Q. Have you ever seen anything issued from  
14 Mr. Scola to the M & J Corporation, Mary &  
15 Josephine Corporation, prior to December 5th,  
16 2003 to the effect that while the vessel is on  
17 port risk coverage, there is no P&I crew  
18 coverage for any of the crew members?  
19 A. Not that I can recollect.  
20 MR. ABROMOVITZ: Thank you. That's all I  
21 have.  
22 MR. PETTINGELL: I have a couple of  
23 follow-up on things that you touched on.  
24 REDIRECT EXAMINATION

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1 early October 2003 when he told you that he did  
2 not want any P&I coverage at all for his crew  
3 while the vessel was at port risk that you told  
4 him you would -- you would take care of it.  
5 Was that -- was that your testimony?  
6 A. I believe so. Yes.  
7 Q. Okay. And how would you go about taking care  
8 of it?  
9 A. I would reiterate his information to Lynn.  
10 Q. I thought you told me before that you told Matt  
11 Russo to call Lynn himself?  
12 A. I did. We both did.  
13 Q. Okay. So you're saying you said to Lynn that  
14 Matt Russo doesn't want any coverage for -- P&I  
15 coverage for crew while the vessel's in port  
16 and that Matt Russo, you understood, also  
17 called Lynn and told her that himself?  
18 A. That's correct.  
19 Q. Other than your conversation with Matt Russo on  
20 October 3rd, 2003 or thereabouts wherein you  
21 claim that he communicated to you his desire to  
22 remove all P&I crew coverage for the Mary &  
23 Josephine while the vessel was on port risk,  
24 did you have any other conversations with him

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1 BY MR. PETTINGELL:  
2 Q. I'm showing you a document, sir. And I  
3 would --  
4 MR. LANGER: Shall we mark it?  
5 Q. I would suggest to you that this is a copy of  
6 the policy that was issued for Policy Year 3.  
7 MR. LANGER: Before you ask any more  
8 questions, let's just mark it so that we'll  
9 have a record of what it is he's talking about.  
10 (Insurance policy effective 8/13/03 to  
11 8/13/04 marked as McVey Exhibit No. 7.)  
12 Q. While you're looking at it, Policy Year 3 --  
13 we -- you've already testified, would run from  
14 August 13th of 2003 to August 13th of 2004.  
15 A. Yes. Sorry.  
16 Q. So the document which has been marked as  
17 Exhibit 7, would you agree that is a copy of  
18 the policy that was issued for Policy Year 3?  
19 MR. LANGER: Look it over and make sure  
20 it's a complete copy as you understand it, if  
21 you know.  
22 A. Some of it's not very legible. But . . .  
23 MR. PETTINGELL: While he's look- --  
24 looking, for the record, the policy contains,

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1 at the top, Policy No. OMM000003-01.  
2 MR. LANGER: I think that's a D, not a  
3 zero.  
4 MR. PETTINGELL: I think you're correct.  
5 DMM.  
6 (Pause.)  
7 A. It appears to be a -- a complete policy.  
8 Q. All right. Now, looking -- looking at the last  
9 page on Exhibit 7, where the language appears,  
10 "This endorsement changes the policy," do you  
11 see that?  
12 A. Under "Changes"?  
13 Q. The last page of this.  
14 A. Yeah.  
15 Q. Now, the last page, would you agree, has got  
16 "Policy Endorsement Number 3"?  
17 A. Yes.  
18 Q. All right. And that has a policy change  
19 effective August 13th, 2003?  
20 A. Yes.  
21 Q. What does that mean?  
22 A. It means that it's covered for port risk only.  
23 Q. No, no, no. The fact that the change is  
24 effective on August 13, 2003, what does that

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1 mean?  
2 A. I don't understand what you mean, what does it  
3 mean.  
4 Q. Well, let me try this. Policy changes  
5 effective August 13, '03, do you see that  
6 language?  
7 A. Yes.  
8 Q. Does that mean to you that whatever changes are  
9 contained in the endorsement are effective as  
10 of August 13, 2003?  
11 A. Yeah. Correct.  
12 Q. Okay. Now, coming down to the bottom, can you  
13 see the date that the policy was issued --  
14 the -- excuse me -- Endorsement 3 was issued?  
15 A. Yes.  
16 Q. When was it issued?  
17 A. What it says here is February 16th, '04.  
18 Q. All right. So we have -- and is this signed by  
19 someone?  
20 A. It's signed by Frank Ostrow.  
21 Q. Who's Mr. Ostrow?  
22 A. He is the former president of OMI.  
23 Q. Okay. Did he hold that position or a position  
24 in OMI on February 16, 2004?

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1 A. Yes.  
2 Q. And, to your knowledge, did he have signing  
3 authority for purposes of signing endorsements,  
4 policy endorsements?  
5 A. Yes.  
6 Q. And by virtue of his signature, he was an  
7 authorized representative of whatever company  
8 he was issuing the endorsement for?  
9 MR. LANGER: Objection.  
10 A. Yes.  
11 MR. LANGER: It asks for a legal  
12 conclusion.  
13 Q. All right. That's your understanding though?  
14 A. It's my understanding. Yes.  
15 Q. All right. Now, prior to the issuance and  
16 effective date -- prior to the effective date  
17 of Endorsement No. 3, would you agree with me  
18 that, as far as the policy language itself is  
19 concerned, the vessel was not covered for port  
20 risk?  
21 Now, there's a distinction I'm making here.  
22 I'm talking about the policy language as  
23 opposed to the effect of the endorsement. I'm  
24 saying, before the endorsement was issued, the

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1 coverage would have been available -- that  
2 would have been available to the vessel would  
3 be what is contained in the policy, not  
4 counting Endorsement 3.  
5 A. Yes.  
6 Q. Do you agree with that?  
7 MR. LANGER: Objection. It asks for a  
8 legal conclusion.  
9 Q. All right. And under the language of Policy  
10 No. -- we'll call it Policy No. 3, Exhibit 7,  
11 prior to the issuance of Endorsement No. 3 and  
12 the effective date of Endorsement No. 3, was  
13 there available, under the terms of the policy,  
14 what we have been referring to as crew P&I  
15 coverage?  
16 MR. LANGER: Objection. Calls for a legal  
17 conclusion.  
18 A. I would say no.  
19 Q. You would say no?  
20 A. Yeah.  
21 Q. And what's the basis of your statement that  
22 there would not be?  
23 A. Because that's what our client asked that there  
24 not be.

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1 Q. I don't think you understood my question, and  
2 that's my fault. The policy, if you look at  
3 Exhibit 7, was issued from -- had -- had  
4 effective dates from August 13th of 2003 to  
5 August 13th, 2004; is that correct?  
6 A. Yeah. Correct.  
7 Q. And would you agree that the policy provisions  
8 contain the -- the scope of the coverage that  
9 would be available under the policy before any  
10 changes in -- in -- in coverage are made?  
11 A. Yes.  
12 Q. All right. So -- and -- and I understand it's  
13 your testimony that Mr. Russo requested that  
14 there be no P&I coverage while the vessel was  
15 on port risk. I understand that's your  
16 testimony.  
17 And, in fact, Endorsement No. 3 to  
18 Exhibit 7, the last page, states that "It is  
19 hereby understood and agreed in consideration  
20 of a return premium of \$3,117 that the F/V Mary  
21 & Josephine is covered for Port Risk only-no  
22 fishing effective August 13, 2003 to  
23 December 21, 2003." Right?  
24 A. Correct.

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1 Q. And Endorsement No. 3, I take it, puts into  
2 effect what you understood Mr. Russo told you  
3 he wanted in the October telephone conversation  
4 that you had?  
5 A. That's correct.  
6 Q. All right. Before that conversation took  
7 place, before Endorsement No. 3 went into  
8 effect -- and it went into effect, by its  
9 terms, on August 13th at the beginning of the  
10 policy period -- the balance of the policy  
11 contained the original policy terms and  
12 provisions of the -- of the policy. Right?  
13 A. Yes.  
14 Q. And under the policy terms as written before  
15 the effective date of Endorsement No. 3, was  
16 there coverage under the policy for what we  
17 have been terming crew P&I coverage?  
18 MR. LANGER: Objection. Seeks a legal  
19 conclusion. Go ahead. The do- -- I mean, the  
20 document speaks for itself. If you're asking  
21 him for --  
22 MR. PETTINGELL: Well, I'm asking him for  
23 his opinion, his understanding.  
24 MR. LANGER: He's -- he's told you it

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1 didn't.  
2 MR. PETTINGELL: Well, I asked the --  
3 MR. LANGER: What more do --  
4 MR. PETTINGELL: -- the bas- --  
5 MR. LANGER: -- you want?  
6 MR. PETTINGELL: Please. I -- I don't want  
7 to argue with you. I asked the basis for that.  
8 And it was apparent to me he didn't understand  
9 my question. So I'm trying it again.  
10 MR. PETTINGELL: Repeat your answer.  
11 Q. Well, don't repeat your answer. Please answer  
12 the question. If it's a different answer, then  
13 give a different answer. If it's the same,  
14 give the same.  
15 A. The same answer I gave before.  
16 Q. And that is?  
17 A. Can you read it back to me?  
18 (Question read back.)  
19 A. I would say no.  
20 Q. Okay. If Endorsement 3 had never issued and  
21 was not a part of the policy -- I'm changing  
22 things; okay -- would there have been coverage  
23 under Policy No. 3, marked as Exhibit 7, for  
24 what has been termed as crew P&I cover?

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1 MR. LANGER: Objection. Calls for a legal  
2 conclusion. The document speaks for itself.  
3 A. I would say no.  
4 Q. And why is that?  
5 A. Because we gave Matt Russo a return premium  
6 from May until policy issue at August on his  
7 asking for it. So, therefore, this policy  
8 wouldn't be the same.  
9 Q. Okay. You're saying, by virtue of your  
10 returning the premium, that was reflective of a  
11 change in coverage as stated in Endorsement No. 3  
12 to Exhibit 7?  
13 MR. LANGER: Objection to the form of the  
14 question.  
15 A. It would be prior to Endorsement 3, I believe,  
16 the way you're talking about --  
17 Q. Okay.  
18 A. -- and by virtue of his asking us.  
19 Q. All right. That's fair. How about if he  
20 hadn't asked you and you didn't return a  
21 premium, would there have been crew P&I cover  
22 under the policy?  
23 A. Yes.  
24 Q. And there would have been coverage -- rather

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1 than have you flip through the pages because  
2 they're not numbered -- there would have been  
3 crew cover for how many crew?  
4 A. Three to four men.  
5 Q. And it would have included -- well, doesn't it  
6 say a little more?  
7 A. It says "excluding Owners."  
8 Q. And since we've established that Mr. Russo was  
9 not an owner, if Mr. Russo was part of that  
10 crew, assuming Endorsement 3 had not issued,  
11 there would have been coverage for him under  
12 this policy as well?  
13 MR. LANGER: Objection. Seeks a legal  
14 conclusion.  
15 A. That's -- that's correct.  
16 Q. Now, in Exhibit 7, Endorsement No. 3 was  
17 issued. And Endorsement No. 3 states, "In  
18 consideration of a return premium of" -- a  
19 stated amount -- "the Mary & Josephine is  
20 covered for Port Risk only-no fishing effective  
21 August 13 to December 21, 2003." Do you agree?  
22 A. Yes.  
23 Q. Would you find the place in Exhibit 7 in Policy  
24 No. 3 where it states that there is no crew

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1 coverage?  
2 MR. LANGER: While it's on port risk, you  
3 mean?  
4 MR. PETTINGELL: Yes.  
5 MR. LANGER: Is there anything in the  
6 policy that says that if it's on port risk,  
7 there's no crew coverage?  
8 A. I don't believe so. But I -- I don't think it  
9 says anything in here regarding that.  
10 MR. PETTINGELL: Thank you. All right. I  
11 have nothing further.  
12 MR. ABROMOVITZ: Just a couple of other  
13 questions.  
14 RECROSS-EXAMINATION  
15 BY MR. ABROMOVITZ:  
16 Q. You indicated that Mr. Ostrow was the former  
17 president of your company?  
18 A. Yes.  
19 Q. Where is he now?  
20 A. Mr. Ostrow passed away.  
21 Q. When did he pass away?  
22 A. April.  
23 Q. Did you -- I'm sorry. I wasn't aware of that.  
24 Have you ever seen anything from Mr. Ostrow to

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1 anybody on behalf of Mary & Josephine  
2 Corporation to the effect of a position on  
3 behalf of OMI or Sunderland or NAS that when a  
4 vessel is on port risk coverage, there is no  
5 crew P&I coverage?  
6 A. No.  
7 MR. ABROMOVITZ: Thank you. That's all I  
8 have.  
9 MR. LANGER: I have a couple of questions.  
10 CROSS-EXAMINATION  
11 BY MR. LANGER:  
12 Q. Mr. McVey, was your conversation with Mr. Russo  
13 on October 3rd of 2003 the first time he talked  
14 to you about putting the boat on port risk for  
15 what Mr. Pettingell has called Policy Year  
16 No. 3?  
17 A. I believe so.  
18 Q. And, in fact, he asked you to put it on port  
19 risk retroactive, in fact, back into part of  
20 Policy Year No. 2?  
21 A. That's correct.  
22 Q. And you carried out his wishes by passing that  
23 information along to Ms. Houde?  
24 A. That's correct.

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1 Q. And you believe that, at some point either on  
2 or shortly after October 3rd of 2003, Mr. Russo  
3 called Ms. Houde?  
4 A. I'm pretty sure he called her.  
5 Q. When you talked to Mr. Russo on October 3rd,  
6 around October 3rd, did he tell you that he  
7 would -- would be working on his boat or the  
8 Mary & Josephine, doing recommendations  
9 provided by a surveyor?  
10 A. No.  
11 Q. Were you aware at any time prior to hearing of  
12 Mr. Russo's accident that there were any  
13 surveyor recommendations that had to be  
14 completed on the Mary & Josephine?  
15 A. I wasn't aware of any.  
16 Q. Who -- who makes decisions regarding whether a  
17 particular claim is covered by the policy?  
18 A. I would say, the insurance companies, the  
19 underwriters.  
20 Q. You -- you don't make that decision?  
21 A. No.  
22 Q. Just so we're clear, I think you testified -- I  
23 just want to be clear; I'm referring to Exhibit  
24 No. 6 -- the reference to the crew complement

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1 being amended to a crew of one, excluding the  
2 owners; is that correct?  
3 A. That's correct.  
4 Q. Was that a result -- the fact that one crew  
5 member was still going to be included, was that  
6 a result of a request from Mr. Russo? Or was  
7 that the result of a suggestion you made to  
8 Mr. Russo?  
9 A. That was a suggestion that -- that I made to  
10 Mr. Russo.  
11 Q. So absent the language in Exhibit No. 6 about  
12 having one crew, would there have been any crew  
13 P&I covering the Mary & Josephine during that  
14 period of port risk coverage?  
15 A. No.  
16 Q. Did you explain to Mr. Russo -- well, strike  
17 that. Do you remember when you spoke to  
18 Mr. Russo about the vessel going on port risk  
19 coverage effective December 9, 2002; in other  
20 words, the port risk period covered by  
21 Exhibit 6? Do you remember when you talked to  
22 him about that?  
23 A. Before the boat was tied up.  
24 Q. Okay. And did you discuss with him at that

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1 time the fact that, absent such an endorsement  
2 as appears in Exhibit 6 including a crew, there  
3 would be no crew P&I coverage?  
4 A. Yes.  
5 Q. You just don't remember when you spoke with him  
6 about that?  
7 A. It would be prior to the boat tied up to do the  
8 repairs. I don't remember exactly when.  
9 Q. Has Mr. Russo ever suggested to you at any  
10 time, in any of the conversations you've had  
11 with him about the vessel being on port risk  
12 coverage, that he expected that the cover --  
13 that, during those port risk periods, there  
14 would be what you've defined as crew P&I  
15 coverage?  
16 A. No. He never suggested that.  
17 Q. During your conversations with him regarding  
18 port risk coverage for the vessel, was his  
19 primary concern always one of saving money?  
20 MR. ABROMOVITZ: Objection.  
21 MR. PETTINGELL: Objection.  
22 A. Yes.  
23 Q. During your conversations with Mr. Russo  
24 regarding port risk coverage for the vessel,

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1 what was, in your conversations, what was his  
2 primary concern?  
3 A. It was financial, saving money.  
4 Q. And what -- what was your best recollection of  
5 why he wanted to put the boat on port risk  
6 coverage?  
7 MR. PETTINGELL: At which policy?  
8 Q. Well, let's --  
9 MR. PETTINGELL: If we're talking about  
10 Policy 2, I want to be clear.  
11 Q. On -- on Policy No. 2, why was -- was the boat  
12 put on port risk coverage for more than one  
13 period during that time, if you know?  
14 A. More than one period in Policy 2?  
15 Q. Yes.  
16 A. I -- I don't recollect more than once.  
17 Q. Now, when it was put on port risk coverage  
18 during Policy Year 2, do you recall why it was  
19 put on port risk at that point?  
20 A. I believe he had to make repairs on his vessel.  
21 Q. Okay. And that was the time you discussed with  
22 him that, absent including one crew, there  
23 would be no crew P&I?  
24 MR. PETTINGELL: Objection.

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1 A. Correct.  
2 Q. Okay. And did you also tell him that he would  
3 save money by not having any other crew?  
4 A. Yes.  
5 Q. He understood that?  
6 A. Yes.  
7 Q. And then you had another conversation with him  
8 in October of '03?  
9 A. Correct.  
10 Q. And the purpose -- your understanding of that  
11 conversation was, he wanted to save money?  
12 A. Correct.  
13 Q. Is there any question in your mind that  
14 Mr. Russo knew on October 3rd of 2003 that he  
15 was asking that the Mary & Josephine not have  
16 crew P&I coverage during the period of the port  
17 risk endorsement?  
18 MR. ABROMOVITZ: Objection.  
19 MR. PETTINGELL: Objection to the form.  
20 A. Say that again. I'm sorry.  
21 Q. Is there any question in your mind that when  
22 you talked with Mr. Russo on October 3rd that  
23 he was asking that all crew P&I coverage be  
24 excluded?

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1 A. He made that very clear, to exclude all crew.  
2 MR. LANGER: I have no other questions.  
3 FURTHER REDIRECT EXAMINATION  
4 BY MR. PETTINGELL:  
5 Q. Mr. McVey, Policy Year 1, did Mr. Russo put the  
6 vessel on port risk?  
7 A. Yes.  
8 Q. Did he keep -- excuse me. Did he keep crew P&I  
9 coverage to some extent?  
10 A. I don't believe so.  
11 Q. Do you know?  
12 A. I don't think he did.  
13 Q. Policy Year 2, did Mr. Russo put the vessel on  
14 port risk coverage?  
15 A. Yes.  
16 Q. Did he keep, to some extent, crew P&I coverage  
17 in place?  
18 A. Yes.  
19 Q. And you're saying, Policy Year 3, he instructed  
20 you that he wanted to do away with all P&I  
21 cover while the vessel was on port risk?  
22 A. That's correct.  
23 Q. And you didn't say anything to him for Policy  
24 Year 3 to the effect that just by putting it on

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1 port risk, you would automatically do away with  
2 crew P&I cover?  
3 MR. LANGER: Objection to the form of the  
4 question.  
5 A. I -- I probably mentioned that to him. Yeah.  
6 Q. Well, did you?  
7 A. Yeah. I believe I did.  
8 Q. And you also mentioned it to him at Policy  
9 Year 2?  
10 A. Yes.  
11 Q. Are you sure about that?  
12 A. I -- I believe, in Policy Year 2, I suggested  
13 that he put the man on there.  
14 Q. Okay. All right. So you told him in Policy  
15 Year 2, just by being on port risk, there is no  
16 crew P&I cover?  
17 A. That's correct.  
18 Q. And you're sure -- sure about that?  
19 MR. LANGER: Objection. It's  
20 argumentative.  
21 A. I'm reasonably sure.  
22 MR. PETTINGELL: Pass the witness.  
23 RECROSS-EXAMINATION  
24 BY MR. ABROMOVITZ:

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1 Q. With reference to Policy Year 2 and the  
2 endorsement identified as Exhibit No. 6, you  
3 testified that it was at your suggestion that  
4 the port risk endorsement included coverage for  
5 one crew member; is that correct?  
6 A. Yes.  
7 Q. Why did you suggest coverage for one crew  
8 member in that year?  
9 A. Because I knew that he was going to be involved  
10 on the boat, and I wanted to make sure that if  
11 something happened that he would have coverage.  
12 Q. You knew that he was going to be involved on  
13 the boat doing what?  
14 A. Repairs of sorts.  
15 Q. Okay. Similar to what he was doing on  
16 December 3rd, 2003 when he got hurt?  
17 MR. LANGER: Objection. Foundation.  
18 A. Could be. I mean, I don't know specifically.  
19 But . . .  
20 Q. Well, you know from your e-mail of  
21 December 5th, 2003 that Mr. Russo was hurt  
22 while he was performing repairs on the boat.  
23 Correct?  
24 A. Yes.

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1 MR. ABROMOVITZ: Thank you. That's all.  
2 MR. LANGER: I have no other questions.  
3 (Whereupon the deposition was concluded at  
4 12:58 p.m.)

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# ERRATA SHEET

INSTRUCTIONS TO WITNESS: 1) Please note any desired corrections to your testimony by page and line number. 2) Enter text as it appears in the transcript. 3) Enter text as it should appear.

PAGE	LINE	CORRECTION
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This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins or other markings on the paper.

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I, Jo Anne M. Shields, a Professional Shorthand Reporter and Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that ROBERT McVEY, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true and accurate record, to the best of my knowledge, skills and ability, of the testimony given by such witness.

IN WITNESS WHEREOF, I have hereunto set  
my hand and affixed my seal of office this 21st  
day of September, 2005.

Notary Public